S. HRG. 103–893

IRAQ CLAIMS LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, TRADE, OCEANS AND ENVIRONMENT

OF THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

SEPTEMBER 21, 1994

Printed for the use of the Committee on Foreign Relations

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CONTENTS

APPENDIX

IRAQ CLAIMS LEGISLATION

WEDNESDAY, SEPTEMBER 21, 1994

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY, TRADE, OCEANS AND ENVIRONMENT
OF THE COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Paul S. Sarbanes (chairman of the subcommittee) presiding.

Present: Senators Sarbanes, Helms, and Robb.

Senator SARBANES. The committee will come to order.

I apologize to the witnesses for the delay in starting the hearing, but there are a number of committee meetings taking place this morning. I had to be at another one and was not able to depart from there.

The Subcommittee on Economic International Economic Policy, Trade, and the Environment meets this morning to hear testimony on the Iraq claims legislation, currently pending before the Foreign Relations Committee.

The legislation, H.R. 3221 and S. 1401, was introduced at the request of the administration to provide a procedure for liquidating Iraq's frozen assets in the United States and allocating those assets amongst the claimants.

The situation to which this is addressed, as I understand it, is as follows: Even before invading Kuwait on August 2, 1990, the Iraqi Government was in debt to numerous American companies and to the U.S. Government for various loans, credits, and commercial transactions.

Iraq also had not compensated the United States for personal injuries or property damage arising from the attack against the U.S.S. *Stark,* although it had paid the families of military personnel killed in that action.

From the day of Iraq's invasions through the end of the international campaign to reverse this action, there was a large human cost in deaths and injuries and continuing illnesses, as well as a large economic cost from property seized, damaged, or destroyed.

The U.N. found Iraq "liable under international law for any direct loss, damage or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

When Iraq invaded Kuwait, one of the first steps that was taken was the blocking by Executive order of all Iraqi property and accounts in the United States.

The value of those assets that were blocked has been estimated at about $1.2 billion, mostly in proceeds from Iraqi oil on the high seas at the time of the invasion.

However, the amount of U.S. claims against Iraq far exceeds the amount of assets currently frozen in the United States. Even before Operation Desert Storm began on January 16, 1991, there were, I am told, about $5 billion in U.S. claims known to the Treasury Department.

Obviously in these circumstances, it is imperative that a fair and workable system be devised for adjudicating claims and compensating claimants.

Now, there is a system in place for doing this multilaterally through the U.N. Claims Commission. However, the mandate of that Commission is limited in scope.

For instance, pre-invasion claims fall outside the jurisdiction of the Claims Commission, as do claims of members of the military forces who served in the Persian Gulf, other than prisoners of war.

We are examining today what system to establish domestically to compensate Americans for claims that are not covered by the U.N. Commission.

We will hear this morning from two panels. The first, speaking for the administration, includes Michael Matheson, the Principal Deputy Legal Adviser at the Department of State, and Richard Newcomb, the Director of the Office of Foreign Assets Control at the Department of Treasury.

Following this panel, we will hear from three private sector witnesses: Thomas Block, senior vice president of Chemical Bank, testifying on behalf of the Bankers' Association for Foreign Trade; Joseph Violante, legislative counsel for the Disabled American Veterans; and Thomas Parrish, vice president of Monk-Austin International, Inc., of Farmville, NC.

Gentlemen, we will hear from you in just a moment, but I yield now to Senator Helms for any opening comments he may wish to make.

Senator HELMS. Mr. Chairman, I appreciate your scheduling this hearing this morning.

The committee, as the distinguished chairman has said, is considering legislation that will allocate and distribute a finite amount of Iraqi assets that were frozen when Saddam Hussein invaded Kuwait on August 2, 1990.

And as much as we are properly interested in the overall U.S. policy to collect every debt that Iraq owes to every American, incurred either before or after the invasion of Kuwait, that really is not what this legislation is all about.

The committee, represented by Senator Sarbanes and me on this occasion, is meeting to try to gain an understanding as to why the Clinton administration has moved forward on a policy that, by its own admission, will not provide 100-percent reimbursements to the U.S. Government, the U.S. businesses, and to the U.S. veterans of the Persian Gulf war.

And to put it bluntly, why the administration is unfairly competing against the veterans of America who served in the Gulf War and against U.S. businesses, especially when the U.S. Government, unlike the veterans and the business people, has the capability to

collect 100 percent on Iraqi debts in a variety of ways from now until eternity. We are talking about an arbitrary, bureaucratic decision, which I believe is patently unfair on its face.

This issue is not an easy one. Instead, it is one in which you could be easily encumbered in a lot of superfluous issues. I hope we can avoid that. We must avoid that.

Instead, it is imperative that we focus on the issues that matter, namely the plight of U.S. citizens, who maintain claims against a relatively small amount of Iraqi money, frozen by the U.S. Government in response to Iraq's invasion of Kuwait.

Now, the complexities of letters of credit transactions or what the U.N. is or is not doing with Iraqi funds are issues that should not be the focal point of our discussions.

I submit, Mr. Chairman, that of primary interest is the fact that there is just a little more than $1 billion to repay more than $3 billion in pre-invasion claims. Somebody is going to lose out under the present circumstances.

The House-passed bill gives the U.S. Government first priority in recovering a portion of its money. It gives the Gulf war veterans next priority. That is as strange lineup to me.

And third and last are the U.S. businesses and individuals scraping for whatever may be left over. And that is plain not fair, because the U.S. Government can collect its money 100 percent by keeping on, keeping on.

It is the responsibility of this committee, I think, to determine a better way and a fairer way to handle this situation.

There are some who have said those of us who question the terms of this legislation are somehow opposed to the establishment of a mechanism to adjudicate U.S. claims against Iraq on a fair and orderly basis. They even go so far to say that we are out to protect a certain group of companies, which is absurd.

What we oppose is the U.S. Government's bureaucratic decision to force U.S. veterans of the Gulf war and U.S. businesses and the U.S. Government itself to settle for less than 100-percent reimbursement from the pool of Iraqi funds frozen in the United States.

Saddam Hussein owes us 100 cents on the dollar, not less, and we should not play into his hands by any legislation that will provide otherwise.

And I am going to do the best I can to help come up with legislation to prevent U.S. veterans and U.S. business people and the U.S. taxpayers from being shortchanged. If President Clinton wants to get tough with a demonstrable reprobate, Saddam Hussein is his man.

Mr. Chairman, more than 3 weeks ago, I sent a letter to the Department of the Treasury, a letter containing a number of questions, all of which, in my considered opinion, are reasonable and fair questions designed to bring to light a number of the issues surrounding this complicated situation.

The Department was to have delivered the answers on Monday of last week, September 12. The deadline came and went. No responses.

Then the Department was to have delivered them this past Friday, September 16. We finally received the package of information late yesterday afternoon, Tuesday, September 20.

Over that period, my staff had a series of conversations with the staff of the Department, inquiring about the status of the questions, and the Director of the Office of Foreign Assets Control assured us that the answers to the questions were delayed because the Treasury Department was slaving to answer every last question. Baloney.

I see very clearly now that they were buying time, pushing up right to the limit, so that a postponement of the hearing would be out of the question.

In the end, the Treasury Department offered only that information that was readily available in the public records from the House debates on this issue. That is all they sent. And those responses were totally unacceptable. As long as I serve in this Senate and on this committee, no bureaucrat is going to get by with that.

I ask your consent, Mr. Chairman, that the questions and the Department of the Treasury's responses be printed in the record. And I want a printed record of this hearing to illustrate the point that I am trying to make right now.

Senator SARBANES. Without objection, so ordered.

Senator HELMS. I thank you, sir.

I sent a series of 25 separate questions. The Treasury returned a 6¼-page letter that answered what the Department felt was in its interest to address and omitted questions it deigned to be against administration position.

That is an old dodge around this place, and you are not going to get by with it. If you get by the committee, you are going to catch hell on the Senate floor. I guarantee it. And take that back to Lloyd Bentsen who is one of the best friends I have had in this Senate.

Not only were these responses submitted later than requested, but they appeared to be an insolent disregard of Senate inquiry.

I was predisposed to be cooperative with the administration on this matter, and I think the exchange of the correspondence between Lloyd Bentsen and me will demonstrate that.

I know that he answered the letter in which he indicated cooperation. I do not know who answered the questions. He did not.

This casual treatment of this inquiry and disregard for legitimate Senate inquiry may have changed my predisposition to cooperation. The Secretary of the Treasury, as I have indicated, was a respected Member of the Senate, and I do not think he would have put up with this, if he were in the Senate and had made the same inquiry of the Department that I did. I doubt very much that he is aware of this. I hope that somebody will go back and make him aware of it.

Finally, Mr. Chairman—and I apologize for running long on this statement—although we received responses to the questions just yesterday, we are nonetheless proceeding with this hearing today without any reasonable opportunity to review the responses of the Treasury Department, unacceptable as many of the responses are, based on even a casual glance at them. And that is all the time we have had to do it.

In light of this, Mr. Chairman, I request that no Iraqi claims-related legislation be included on the agenda for the committee's business sessions until all of these questions have been answered.

And I am going to exercise my prerogative as a Senator in that regard.

Thank you for your patience with me, Mr. Chairman.

[The information referred to may be found in the appendix.]

Senator SARBANES. Thank you very much, Senator Helms.

Let me just make some observations. First of all, in part, the hearing date was postponed so there would be a reasonable period of time to review the answers to the questions.

The answers were supposed to have come in on September 12, as I recall, and this hearing was originally set for September 14. It was then moved back, which would have provided more than a week to review the answers.

Now, as it happened, as you point out, the answers did not come in on September 12. In fact, they came in just yesterday or the day before.

Senator HELMS. Yesterday.

Senator SARBANES. So I think your point there is well taken. I know there is a business meeting scheduled for Thursday. It is my view that this legislation ought not to be on the agenda for that meeting.

While I do not quite remember the questions, I think we should get answers to them. We then may get in an argument about whether the answers are adequate or not; I do not know. But in any event, it is my view that this legislation should not be on the agenda of the next business meeting.

I do think the Treasury needs to address the questions that you have raised here this morning and address them forthwith.

This is a very complicated issue, I want to say to the Treasury representatives. And there are a number of pros and cons about it. I am not sure that it is being adequately addressed in the Department. Of course, we will explore some of those matters right now.

But I think it is obvious that it is going to be very difficult to move forward on this legislation unless a lot of the very pointed questions, which have been raised by a number of people, are adequately addressed.

Senator HELMS. I thank you, Mr. Chairman.

Senator SARBANES. Now, with that, Mr. Matheson, why don't you go ahead?

And then we will take Mr. Newcomb, the Director of the Office of Foreign Assets Control at the Department of Treasury.

STATEMENT OF MICHAEL J. MATHESON, PRINCIPAL DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Mr. MATHESON. Thank you very much, Mr. Chairman, and I appreciate the opportunity to appear before the subcommittee today in support of the proposed Iraq Claims Act of 1994.

The administration strongly supports the enactment of this legislation during the current session of the Congress. We believe the legislation would create a fair and orderly system for providing compensation for claims of U.S. nationals and the U.S. Government against Iraq.

To begin with, this legislation would provide useful administrative flexibility to ensure that U.S. nationals receive compensation due to them under the U.N. system for the victims of the Gulf war.

My statement describes that in more detail. I would be happy to answer questions about that aspect.

In addition, the proposed legislation would authorize us to provide compensation from frozen Iraqi assets in the United States, for claims of the U.S. Government and U.S. nationals that are not within the jurisdiction of the U.N. Commission.

In particular, this would provide a source of compensation for pre-war claims against Iraq and for claims of members of the U.S. Armed Forces that are not covered by the U.N. system.

This would include claims on behalf of the U.S. Armed Forces personnel who were killed or injured in the Gulf war, the unsatisfied claims of the U.S. Navy personnel injured in the Iraqi attack on the U.S.S. *Stark* in 1987, defaulted loans made to Iraq by U.S. financial institutions, payments due to U.S. businesses for goods shipped to Iraq prior to the war, and export credit guarantees issued by the Commodity Credit Corporation.

The proposed legislation would provide a procedure for adjudicating these claims in an orderly manner and in a single forum, which would afford all claimants an equitable opportunity for recovery.

The claims of U.S. nationals would be adjudicated by the U.S. Foreign Claims Settlement Commission, which has substantial experience in adjudicating such claims.

The legislation would authorize the vesting and liquidation of frozen Iraqi assets in the United States and would establish an Iraq claims fund in the Treasury to pay the valid claims of U.S. nationals that are outside the jurisdiction of the U.N. Commission.

The legislation would also authorize the President to allocate a proportionate share of these funds for the payment of the U.S. Government's valid claims.

Now, the proposed legislation would not, by itself, guarantee full compensation to U.S. claimants whose claims are outside the jurisdiction of the U.N. Commission.

And the value of those claims is expected to exceed by a large amount the value of frozen Iraqi assets in the United States. Nevertheless, the proposed legislation would provide a fair opportunity for all such claimants to obtain substantial compensation in a reasonably short period.

Furthermore, the legislation would in no way extinguish or limit any unsatisfied part of these claims, and the U.S. Government and U.S. nationals would retain the right to pursue such claims against Iraq in the future in any way that is lawfully open to them.

Without this legislation, many U.S. nationals with claims outside the U.N. system may feel increased pressure to seek to recover their losses through litigation in U.S. courts.

This could create a so-called race to the courthouse, in which certain claimants would obtain judgments on a piecemeal basis, and then seek to execute against the limited amount of frozen Iraqi assets to the disadvantage of other U.S. claimants.

Some claimants have already gone to court. Others are presumably waiting to see whether this legislation is adopted before deciding whether to do likewise.

In our view, Mr. Chairman, it is important to act on this legislation now, since delay would only serve to postpone recovery by U.S. claimants and foster confusion in the claimant community.

It would be more efficient to adjudicate these claims promptly before the Foreign Claims Settlement Commission while witnesses are still available and the evidence is relatively fresh. Delay would only hamper the adjudication of such claims in the future.

We believe that the proposed legislation would establish a fair and orderly claims program for all U.S. claimants. The only priority that would be created by the legislation would be for noncommercial claims of members of the U.S. Armed Forces and other individuals who suffered loss and injury as a result of the Iraqi invasion and occupation of Kuwait or the attack on the U.S.S. *Stark*.

These claims would be accorded priority to alleviate individual hardships as quickly as possible. In our view, it would be unfair to give a special preference to any other group of claimants.

The House of Representatives approved a version of this legislation, H.R. 3221, on April 28. The House version is consistent in all essential respects with the original administration proposal, which was S. 1401.

We urge prompt action on this legislation so that it may be enacted into law during this session. We believe this would clearly be in the interests of U.S. claimants against Iraq, particularly members of the U.S. Armed Forces and their families who suffered during the Gulf war.

Mr. Chairman, I would like, in addition, just briefly to address some possible misunderstandings which may have arisen about the effect of this legislation.

First of all, this legislation and the recovery which it would provide from frozen Iraqi assets would in no way reduce the amounts which any U.S. claimant might receive as a result of claims against Iraq.

And in particular, it would in no way reduce any compensation which U.S. servicemen might receive from the U.S. Government as a result of their Gulf war service, whether from the Department of Veterans Affairs or otherwise.

It is an additional source of compensation. For example, if a U.S. serviceman had claims, which the Department of Veterans Affairs does not pay benefits for—pain and suffering, loss of income, or whatever, he could come to the Foreign Claims Settlement Commission for additional compensation under the terms of this act.

So this provides an additional source, and in no way detracts from what veterans or anyone else would receive from other possibilities.

Senator SARBANES. I want to be very clear about that. This legislation, you are now asserting to us, would not in any way reduce or deny the benefits available to veterans through the VA or through any other domestic program.

Mr. MATHESON. That is correct. It provides an additional source, but in no way reduces what they may receive in any other way as a result of their Gulf war service.

Second, the suggestion has been made that this legislation represents a decision on the part of the administration to settle for less than 100 percent on claims against Iraq. That is certainly not our intent, and I do not believe it is the effect of the legislation.

You have to see this legislation as part of a long-term broader program by the U.S. Government, both by the Bush administration

and by this administration to find recovery against Iraq in various ways for claims owed to the U.S. Government and to U.S. nationals.

Part of that overall program, for example, are the extensive efforts which the U.S. Government has made, both in the Bush administration and in this administration, to create the U.N. Compensation Commission and to press forward with U.S. claims before that Commission, all of which relate to Iraqi actions during the war.

A second part of the program is this legislation, which would essentially take what assets of Iraq we have in our possession and apply them to the claims which are not before the U.N. Commission.

But I emphasize that this in no way represents a U.S. decision to settle for less than 100 percent. It in no way gives up any claims or rights we have against Iraq.

And while I cannot guarantee that we will be able to successfully pursue the rest of it, we shall certainly try to our utmost.

And the important point for the subcommittee is that this legislation does not represent any yielding on that position. This is one of the steps we take against Iraq. This provides an additional source of funds, but it is by no means the whole picture.

If the legislation is not adopted, then these funds remain in a frozen status, and U.S. claimants cannot have access to it. So by adopting the legislation, you take one of the steps that is necessary toward providing maximum possible recovery against Iraq.

Forgive me for having extended my statement, but I thought it was important to address those points.

Senator SARBANES. Well, we want to pursue some of those points.

[The prepared statement of Mr. Matheson follows:]

PREPARED STATEMENT OF MR. MATHESON

Thank you, Mr. Chairman. I appreciate the opportunity to appear before the Subcommittee today in support of the proposed Iraq Claims Act of 1994. The Administration strongly supports enactment of this legislation during the current session of Congress. We believe the legislation would create a fair and orderly system for providing compensation for claims of U.S. nationals and the U.S. Government against Iraq.

To begin with, this legislation would provide useful administrative flexibility to ensure that U.S. nationals receive compensation due to them under the UN system for the victims of the Gulf War. In 1991 the United Nations established a Compensation Commission in Geneva to adjudicate claims against the Government of Iraq arising from the invasion and occupation of Kuwait, and to pay these awards from proceeds of Iraqi oil exports. These claims are submitted to the UN Commission by governments on behalf of themselves and their nationals, and payments are made by the UN Commission to those governments for distribution to their claimants. To the extent that the U.S. Government receives payments from the UN Commission for specific claims, these amounts can be certified by the State Department and paid by the Treasury Department directly to U.S. claimants under existing legal authority. On the other hand, if the UN Commission pays a lump sum to the U.S. Government for a group of U.S. claims without determining how that lump sum should be allocated among the individual claimants, the proposed legislation would authorize the U.S. Foreign Claims Settlement Commission (an independent agency within the Justice Department) to make this allocation.

In addition, the proposed legislation would authorize us to provide compensation, from frozen Iraqi assets in the United States, for claims of the U.S. Government and U.S. nationals that are not within the jurisdiction of the UN Commission. In particular, this would provide a source of compensation for pre-war claims against Iraq and for claims by members of the U.S. Armed Forces not covered by the UN system. This would include claims on behalf of U.S. Armed Forces personnel who

were killed or injured in the Gulf War, the unsatisfied claims of U.S. Navy personnel injured in the Iraqi attack on the USS STARK in 1987, defaulted loans made to Iraq by U.S. financial institutions, payments due to U.S. businesses for goods shipped to Iraq prior to the war, and export credit guarantees issued by the Commodity Credit Corporation.

The proposed legislation would provide a procedure for adjudicating these claims in an orderly manner and in a single forum, affording all claimants an equitable opportunity for recovery. The claims of U.S. nationals would be adjudicated by the U.S. Foreign Claims Settlement Commission, which has substantial experience in adjudicating such claims. The legislation would authorize the vesting and liquidation of frozen Iraqi assets in the United States, and would establish an Iraq Claims Fund in the Treasury to pay the valid claims of U.S. nationals that are outside the jurisdiction of the UN Commission. The legislation would also authorize the President to allocate a proportionate share of these funds for the payment of the U.S. Government's valid claims.

The proposed legislation would not, by itself, guarantee full compensation to U.S. claimants whose claims are outside the jurisdiction of the UN Commission. The value of those claims is expected to exceed by a large amount the value of frozen Iraqi assets in the United States. Nevertheless, the proposed legislation would provide a fair opportunity for all such claimants to obtain substantial compensation in a reasonably short period. Furthermore, this legislation would in no way extinguish or limit any unsatisfied part of these claims, and the U.S. Government and U.S. nationals would retain the right to pursue such claims against Iraq in the future in any way that is lawfully open to them.

Without this legislation, many U.S. nationals with claims outside the UN system may feel increased pressure to seek to recover their losses through litigation in U.S. courts. This could create a race to the courthouse, in which certain claimants would obtain judgments on a piecemeal basis, and then seek to execute against the limited amount of frozen Iraqi assets to the disadvantage of other U.S. claimants. Some claimants have already gone to court, and others are presumably waiting to see whether this legislation is adopted before deciding whether to do likewise.

In our view, it is important to act on this legislation now, since delay would serve to postpone recovery by U.S. claimants and foster confusion in the claimant community. It would be more efficient to adjudicate these claims promptly before the Foreign Claims Settlement Commission while witnesses are still available and the evidence is relatively fresh. Delay would only hamper the adjudication of such claims in the future.

The proposed legislation would establish a fair and orderly claims program for all U.S. claimants. The only priority that would be created by the legislation would be for the non-commercial claims of members of the U.S. Armed Forces and other individuals who suffered loss and injury as a result of the Iraqi invasion and occupation of Kuwait or the attack on the USS STARK. These claims would be accorded priority to alleviate individual hardships as quickly as possible. In our view, it would be unfair to give a special preference to any other group of claimants, such as the holders of advised letters of credit issued by Iraqi banks, which would be the effect of some other legislative proposals.

The House of Representatives overwhelmingly approved a version of this legislation (H.R. 3221) on April 28. The House version is consistent, in all essential respects, with the original Administration proposal (S. 1401). We urge prompt action on this legislation so that it may be enacted into law during this session. We believe this would clearly be in the interests of U.S. claimants against Iraq, particularly members of the U.S. Armed Forces and their families who suffered during the Gulf War.

Mr. Newcomb also has a brief statement, after which we would be happy to respond to your questions. Thank you.

Senator SARBANES. Mr. Newcomb, why don't we hear from you, and then we will go to questions for both of you.

STATEMENT OF R. RICHARD NEWCOMB, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

Mr. NEWCOMB. Thank you, Mr. Chairman, Senator Helms.

I am here today to discuss the administration's proposed Iraq Claims Act of 1994.

The administrations proposed act was developed to provide a fair and orderly system for satisfying the claims of U.S. nationals and the United States against Iraq.

The Iraq Claims Act incorporates the best approach to compensation issues, one that will permit available assets to be allocated equitably among similarly situated claimants.

Senator HELMS. Pull your microphone a little closer. You sound very distant.

Mr. NEWCOMB. I am sorry.

The bill authorizes adjudication of U.S. nationals' claims in a single forum, applying consistent standards of proof, and permits the President to compensate claimants by vesting blocked Iraqi assets in the United States.

We believe this approach is far preferable to piecemeal approaches represented by other proposals compensating small segments of the business community or individual litigation resulting in a race to the courthouse, either of which will result in inequitable rates of recovery.

The Iraq Claims Act establishes an orderly procedure for adjudicating claims. It complements the U.N. compensation program, which was set up to handle claims resulting from Iraq's invasion and occupation of Kuwait.

Like the U.N. program, it establishes a priority for noncommercial claims made by veterans of Desert Shield and Desert Storm and other individuals arising out of Iraq's invasion and occupation of Kuwait, or the 1987 attack on the U.S.S. *Stark*.

Beyond that, all similarly situated claimants are treated equally. This evenhanded treatment of claims is consistent with our administration of sanctions and the longstanding U.S. Government policy of preserving blocked assets as a pool against which all claimants are given opportunity to seek recovery.

Applicable substantive law to be applied to the claims of U.S. nationals is the responsibility of the Foreign Claims Settlement Commission.

In considering the compensation of U.S. nationals, the United States must consider the interests of all U.S. claimants, and attempt to preserve their access to equitable settlement regimes. The United States is committed to a fair and equitable distribution of the available funds among all U.S. claimants.

If blocked property forms the basis of the compensation funds, it is not in the interest of the United States to permit a piecemeal distribution of this property.

Piecemeal distribution, based on a race to the courthouse, will result in variable rates of recovery by U.S. nationals on their claims against Iraq, and may result in some U.S. nationals obtaining little or no recovery.

This policy has been followed consistently through the Iraq program and other sanctions programs including, for example, the Iran hostage crisis of 1979 to 1981, where nearly $12 billion was blocked.

An equitable claims resolution program was established through the Iran-U.S. Claims Tribunal and various escrow accounts established by the Algiers accords.

There is no reason that one class of unsecured creditors, such as those holding certain letters of credit, should rate more highly than any other unsecured creditors with receivables or breach of contract claims.

Moreover, this bill also addresses individuals with death, injury, or expropriation claims. Unsecured creditors, including unsecured letters of credit holders, should not be compensated 100 percent at the expense of veterans and individuals whose recoveries would be reduced or even eliminated so that a small group of businesses could receive full compensation.

A version of this bill, H.R. 3221, was approved by the House of Representatives on April 28. The version passed by the House is similar in all essential respects with the original administration proposal.

We hope that the members of the committee and the Congress will join us in supporting the inclusive and equitable the approach taken in the Iraq Claims Act of 1994.

Thank you for the opportunity to appear before the committee this morning. I will be pleased to respond to your questions.

[The prepared statement of Mr. Newcomb follows:]

PREPARED STATEMENT OF MR. NEWCOMB

Chairman Sarbanes and Members of the Committee: Good morning. I am here to discuss the Administration's proposed Iraq Claims Act of 1994 (S. 1401).

The Administration's proposed Iraq Claims Act of 1994 was developed to provide a fair and orderly system for satisfying the claims of U.S. nationals and the United States against Iraq. The Iraq Claims Act incorporates the best approach to compensation issues, one that will permit available assets to be allocated equitably among similarly-situated claimants. The bill authorizes adjudication of U.S. nationals' claims in a single forum, applying consistent standards of proof, and permits the President to compensate claimants by vesting blocked Iraqi assets in the United States. We believe this approach is far preferable to piecemeal approaches represented by other proposals compensating small segments of the business community, or individual litigation resulting in a race to the courthouse, either of which will result in inequitable rates of recovery.

The Iraq Claims Act establishes an orderly procedure for adjudicating claims. It complements the U.N. compensation program, which was set up to handle claims resulting from Iraq's invasion and occupation of Kuwait. Like the U.N. program, it establishes a priority for non-commercial claims made by veterans of Desert Shield and Desert Storm or other individuals arising out of Iraq's invasion and occupation of Kuwait, or the 1987 attack on the U.S.S. Stark. Beyond that, all similarly-situated claimants are treated equally. This evenhanded treatment of claims is consistent with our administration of the sanctions and the longstanding U.S. Government policy of preserving blocked assets as a pool against which all claimants are given an opportunity to seek recovery. Applicable substantive law to be applied to the claims of U.S. nationals is the responsibility of the Foreign Claims Settlement Commission.

In considering the compensation of U.S. nationals, the United States must consider the interests of all U.S. claimants, and attempt to preserve their access to an equitable settlement regime. The United States is committed to a fair and equitable distribution of the available funds among all U.S. claimants. If blocked property forms the basis of the compensation funds, it is not in the interest of the United States to permit a piecemeal distribution of this property. Piecemeal distribution based on a race to the courthouse will result in variable rates of recovery by U.S. nationals on their claims against Iraq, and may result in some U.S. nationals obtaining little or no recovery. This policy has been followed consistently through the Iraq program and other sanctions programs including, for example, the Iran hostage crisis of 1979–81 where nearly $12 billion was blocked. An equitable claims resolution program was established through the Iran-U.S. Claims Tribunal and various escrow accounts established by the Algiers Accords.

There is no reason that one class of unsecured creditors, such as those holding certain letters of credit, should rate more highly than other unsecured creditors with

receivables or breach of contract claims. Moreover, this bill also addresses individuals with death, injury or expropriation claims. Unsecured creditors, including unsecured letters of credit holders, should not be compensated 100% at the expense of veterans and individuals, whose recoveries would be reduced or even eliminated so that a small group of businesses could receive full compensation.

A version of this bill (H.R. 3221) was approved by the House of Representatives on April 28. The version passed by the House is similar in all essential respects with the original Administration proposal (S. 1401). We hope that the members of the Committee and the Congress will join us in supporting the inclusive and equitable approach taken in the Iraq Claims Act of 1994.

I thank you for the opportunity to appear before the Committee this morning. I will be pleased to respond to any questions.

Senator SARBANES. Well, gentlemen, thank you both for your testimony.

I have some questions, and then I will yield to Senator Helms, who I know has a number of questions he also would like to put to you.

When you say that it considers the interests of all U.S. claimants, is the U.S. Government putting itself at an equal level with a veteran or an individual or a business that has a claim?

Mr. MATHESON. Yes. The legislation would authorize the President to allocate a proportionate amount between the U.S. Government and the U.S. claimants, so that——

Senator SARBANES. Well, now, let us say I am an individual and I have a claim. Since the amount of assets is far less than the amount of claims, I am therefore presumably going to get a proportional amount of my claim.

I take it that would not force me to relinquish the balance of my claim. I still would have the balance of my claim, is that correct?

Mr. MATHESON. That is absolutely correct. And, in fact, if you will look at the legislation, for example, in the Senate version, section 5(b), it expressly says that: "payment of any award made pursuant to this Act shall not extinguish any unsatisfied claim or be construed to have divested any claimant, or the United States on his or her behalf, of any rights against the Government of Iraq with respect to any unsatisfied claim."

Senator SARBANES. Well, now, how would I assert the balance of my claim?

Mr. MATHESON. That is not going to be easy. And it has often been the case that U.S. business or other creditors have difficulty in recovering from foreign governments because we do not have access to assets of those foreign governments that are adequate.

Senator SARBANES. So what would I do?

Mr. MATHESON. One may attempt to look for other Iraqi assets, although that probably will not be a possibility until Iraq begins its oil transactions abroad.

Senator SARBANES. Well, would you say that my ability to do that is greater or less than the ability of the U.S. Government to do that, in terms of the resources available to me to engage in such an effort?

Mr. MATHESON. The U.S. Government obviously has resources and assets, diplomatic and political leverage. We will be exercising that on behalf of U.S. claimants, as well as the U.S. Government.

Senator SARBANES. You are more likely to exercise it if it is your own claim, are you not?

Mr. MATHESON. No, I do not think so.

Senator SARBANES. Well, let us make that assumption. If there is a limited amount of assets and a large amount of claims, I want to raise the question of whether the Government ought to come in behind the private sector. And why not?

Mr. MATHESON. First of all, Senator, if you look at the record, I think you will find that the U.S. Government has pursued private claims even before Government claims.

In the case of Iraq, we negotiated before the war recoveries for U.S. victims of the *Stark* before we even attempted to recover for U.S. Government losses in the *Stark* incident.

Senator SARBANES. Well, why not do that in this legislation? Why not continue the same approach?

Mr. MATHESON. We felt since we were representatives of the public funds as well, that we should have a mechanism by which the President might choose to allocate up to a proportionate amount for——

Senator SARBANES. Yes, but your power subsequently to find additional assets and to hold them, in order to meet your claim, is much greater than the power of an individual veteran or a business in the private sector, is it not?

Mr. MATHESON. We do have greater power. I am suggesting that we will exercise that on behalf of U.S. claimants, as well as the U.S. Government.

Senator SARBANES. Well, if that is the case, what would be the problem with putting the Government a step down in the claims process?

Mr. MATHESON. It is just that we felt we should allow the President to have an opportunity to recover a proportionate amount for the Government.

Senator SARBANES. Why?

Mr. MATHESON. Because the Government has legitimate interests in recovering amounts Iraq owes it, as well as private claimants. So it seems appropriate that the Government might have the opportunity to share equally.

Senator SARBANES. Of course, that means the private claimants will get less of the assets that have been seized.

Mr. MATHESON. They get less——

Senator SARBANES. Even so, they are not going to get anywhere near the extent of their claim.

Mr. MATHESON. That is correct.

Senator SARBANES. And then the private claimant is going to be left somehow trying to get the balance of it.

Mr. MATHESON. That is correct.

Senator SARBANES. With power far less than the power that resides in the Government to try to get its claim satisfied——

Mr. MATHESON. Yes. But to the extent we can——

Senator SARBANES [CONTINUING]. Is that not correct?

Mr. MATHESON [CONTINUING]. We will try to help them.

Senator SARBANES. Pardon?

Mr. MATHESON. That is correct. But to the extent we can exercise our power, we will certainly try to help them.

Senator SARBANES. Well, I know. But to the extent you can exercise your power, you will certainly try to help yourself, I assume.

Mr. MATHESON. We will do both.

Senator SARBANES. Well, why are we putting it in a competitive situation? Look, you have a limited amount of assets. You have a lot of claims. You have different people making the claims. Even within the private sector, there are differing capacities.

I mean, let's take some individual veteran who has a claim. How is he going to assert his claim for the balance? Is he going to hire a lawyer?

Mr. MATHESON. No. As a practical matter, he is not going to be able to recover himself. He is only going to be able to recover to the extent we are able to use our influence in international relations to establish further recovery for him.

Senator SARBANES. Well, why not let him recover the maximum proportionately that can be done within the private sector, rather than taking some of that money for the Government recovery, and let the Government then do the cleanup effort?

Mr. MATHESON. As I say, Senator, we felt obliged, since we were representatives of the U.S. Government, to give the taxpayers a certain recovery, as well.

Senator SARBANES. What did you do in the Iran situation?

Mr. MATHESON. We provided a mechanism, through the Iran Claims Tribunal, which would receive claims of both private citizens and governments.

As it happens, the U.S. Government did not have a lot of claims against Iran, so that was primarily a benefit to American private claimants.

Senator SARBANES. Do you have any precedent for what you are talking about here?

Mr. MATHESON. About the vesting of assets for the purpose of providing it to claimants?

Senator SARBANES. No. About putting the Government in an equal posture when there is a limited amount of recovery and a large amount of claims, the consequence of which is that some of the recovery goes to the Government.

I mean, I am for the Government recovering its losses. I am just trying to discuss the order of priority in which it is done. And I am looking especially at the capacity of the different claimants to assert their claims in terms of the power they can bring to bear in trying to get their claims satisfied.

Suppose I am an individual with an outstanding claim.

Suppose I said, "Well, you know, if the Government did not take a chunk out of this, instead of getting 20 percent, I could 50 percent of my claim satisfied."

But the U.S. Government made a Commodity Credit Corporation loan and understandably they want to get some of their money back, too. Obviously, the end objective would be that everyone gets recompensed at 100 percent of their claims.

The question is: How are you going to get there?

Now, is there a previous precedent in which the Government took out a chunk of the money, thereby reducing the amount available to the private claimants?

Mr. MATHESON. We do not really have precedents of any kind with respect to the seizure and vesting of assets, because this is basically the first time we have done something like this.

In terms of international negotiations by the United States, we have had some cases in which we have equal recovery and other cases in which we have sought priority recovery for private claimants. So you can find examples of both.

Senator SARBANES. What is the Government doing in terms of helping individual citizens and private business interests assert their claims?

Mr. MATHESON. With respect to the U.N. system, which covers claims arising out of the war, the U.S. Government has directly asserted these claims before the Commission.

Senator SARBANES. Have you gone out and, in effect, sought out the claimants?

Mr. MATHESON. Yes, that is right.

Senator SARBANES. You have.

Mr. MATHESON. We have, and we work with the claimants to develop their claims.

Senator SARBANES. All right.

Mr. MATHESON. We have submitted them to the Commission and argued before the Commission in support of our claimants. We have submitted about 3,200 claims to date, worth about $1.7 billion. That is No. 1.

The No. 2 thing we are trying to do is this legislation, which will provide an additional source of assets and funding for claims that are not covered by the U.N. Commission.

Senator SARBANES. Let me just address the U.N. Commission first, since it is there, the money is there, and that process is moving, because I want to get some sense of how adequately this is being covered.

Have all known U.S. claims been filed with the U.N. Commission?

Mr. MATHESON. I believe there are still a few that have not yet been filed, either because of late submissions or for other reasons. But the vast majority have.

Senator SARBANES. Has an effort been made to such an extent that you can assert to us that you believe that anyone with claims that could be brought to the U.N. Commission has been brought into the process?

Mr. MATHESON. There are a few, as I say, late filers whom we still have not put in, but they will be shortly.

Senator SARBANES. Are there people who ought to file, who have not filed, who may be out there and who have not been in one way or another reached?

Mr. MATHESON. This, of course, we cannot guarantee. We have made public——

Senator SARBANES. No. I am asking what kind of outreach program you have had in order to try to guarantee that answer; in other words, to what extent you are really being an advocate.

Mr. MATHESON. Yes. We have had public notices in the Federal Register. We have ourselves had meetings with the claimant community. We have done what we can to make sure that people are aware of the program.

Senator SARBANES. All right. Now, the U.N. process is only for a very limited spectrum of claims, is that correct?

Mr. MATHESON. It is limited, but it is not insignificant. It is $1.7 billion, and it includes all damage done by Iraq in the war, except, again, for the military veterans.

Senator SARBANES. Now, the claims that will be asserted outside of that process, which is what we are talking about here——

Mr. MATHESON. Right.

Senator SARBANES [continuing]. Initially will come from the frozen assets. Hopefully, in the long run, there will be other assets. After all, Iraq is not a country without resources. At the moment, it is denied access to the international market to dispose of its resources.

Mr. MATHESON. That is right.

Senator SARBANES. But if, at some point, Iraq begins to move its resources back into the international market, it is going to have assets that presumably should be used to pay off these claims.

Mr. MATHESON. Yes, that is correct.

Senator SARBANES. Correct?

Mr. MATHESON. That is correct.

Senator SARBANES. Now, these claims outside of the U.N. process are going to be adjudicated through the Foreign Claims Settlement Commission?

Mr. MATHESON. Well, this is what we are going to use to dispose of the assets we already have in our hands. How it would work in any future claims settlement with Iraq would depend on what we negotiate.

Senator SARBANES. Do I, as an individual, have to file a claim myself with the Foreign Claims Settlement Commission?

Mr. MATHESON. That is right. The Foreign Claims Settlement Commission would, under the legislation, put out another notice asking for claimants to make submissions.

Senator SARBANES. Do I have to get a lawyer to do that?

Mr. MATHESON. You do not have to get a lawyer, but whether you would want to do so would depend on the size and the complexity of your claim.

Senator SARBANES. Can the veterans organizations file claims on behalf of a group, or does each individual have to do it?

Mr. MATHESON. I guess that will depend upon the procedures adopted by the Foreign Claims Settlement Commission.

Senator SARBANES. I guess what I am really getting at is, given the nature of the Iraqi situation, it seems to me that the Government should be an advocate, almost a counsel, for individuals and businesses with claims.

Mr. MATHESON. Sure.

Senator SARBANES. And not simply say: "Well, there is a procedure, and you can file a claim. But that is your problem."

And then, of course, you are proposing that the Government come in and take a chunk of the assets. I take it you have written the legislation in a way that the President could decide not to take anything for the Government, is that right?

Mr. MATHESON. Yes, that is correct.

Senator SARBANES. And if he does take for the Government, the maximum is a proportional amount.

Mr. MATHESON. That is the way the House version came out. That would be——

Senator SARBANES. What was your proposal?

Mr. MATHESON. Our proposal did not make a specification.

Senator SARBANES. So it could have taken it all.

Mr. MATHESON. Yes, in theory. But we had indicated——

Senator SARBANES. Well, I mean, look——

Mr. MATHESON [continuing]. We have indicated we can accept——

Senator SARBANES. If you dismiss it in theory, then why do we not dismiss it in law?

Mr. MATHESON. I do not disagree. We have accepted the House provision. So we agree that the House provision, which maximizes the amount that the——

Senator SARBANES. Suppose we said: "Well, as a matter of law, we think we ought to write in one of the two options the President has, namely that he not take any out of there."

Mr. MATHESON. That, of course, is within your power. We are just suggesting that the U.S. Government also has interests that it would be fair to give some consideration to.

Senator SARBANES. Well, I do not quarrel with that. I am just trying to flesh this out, and this is my last question. I apologize to my colleague.

Senator HELMS. Go right ahead.

Senator SARBANES. I have not yet gotten out of you the rationale as to why you put the Government claims on an equal basis with the private claims. Given the difficulties that individuals in the private sector have in asserting their claims, and given that the impact of their losses fall very much on the individual, why put the Government's claim in there? The Government loss is significant, but its impact is more broadly diffused—and the Government's power to try to find additional assets is much greater. You tell me that there is no precedent for this, is that correct?

Mr. MATHESON. There is no precedent for this kind of program to vest assets in these situations. So there is no precedent either way.

But could I respond by saying——

Senator SARBANES. Sure.

Mr. MATHESON [continuing]. That our policy all the way through, in every step of the way, has been to protect both claimant and Government interests. And typically, we have, in fact, put claimants forward first.

In the discussions with the Iraqis before the war about the *Stark* episode, we put the individual servicemen first. We put ourselves second.

Senator SARBANES. Well, what is your objection to doing that with respect to access to the frozen assets?

Mr. MATHESON. We have reserved in the legislation the ability of the President to take up to a proportionate amount. He, of course, can make a judgment as to whether he wants to take——

Senator SARBANES. You just told me that you tried to put your concern for the private claimants first.

And I am now asking why was that not taken to the point of saying that, since you have limited assets and a large amount of claims, you would commit the assets to meeting the private claims, and the U.S. Government would then be left trying to realize its

claims later? Why is it not being recognized that one, the Government has greater power to do so, and two, that the impact from not being able to recover the Government's claims is diffused equally across the taxpayer spectrum?

On the contrary, the impact on the individual is not diffused. The impact on the individual can be very heavy, and they may get reimbursed, I don't know, only 10 percent.

I have not analyzed the proportion of the claims held by the Government as opposed to individuals. Now, maybe therein lies a response. But if the Government share here is fairly large—suppose it is 50 percent—is it 50 percent?

Mr. MATHESON. We can only estimate it in a very rough way, but our rough estimate is that the total amount of claims that might be covered by this program might be in the area of $5 billion.

Senator SARBANES. Right.

Mr. MATHESON. And I believe Treasury has estimated that roughly $3 billion are for private claims and $2 billion for Government claims.

Mr. NEWCOMB. That is correct.

Mr. MATHESON. Mind you, that is a very rough estimate, but it gives you a ballpark idea.

Senator SARBANES. Well, that is almost half and half. So that means if the Government took second place, individuals could double what they realize on their private claims, is that correct?

Mr. MATHESON. Potentially.

Senator SARBANES. Well, you are shaking your head no. Why is that no?

Mr. NEWCOMB. I think the answer, Mr. Chairman, is, of the $5 billion we estimate of the claims, $2 billion would be for Government claims, $2 billion or so. So that is 40 percent.

Senator SARBANES. If you are shaking your head because I said 50 percent rather than 40 percent, I concede the point, although I thought I said, just for ease of illustration, assume it was half, and therefore you would double. You would not double their awards; you would almost double them.

Is that correct, though, essentially?

Mr. NEWCOMB. I think it goes somewhere between 20 to 25 cents on the dollar up to 35 to 40 cents on the dollar, something like that. That would be a ballpark estimate.

Mr. MATHESON. We can only estimate it at this point.

Mr. NEWCOMB. Because these claims are assertions at this point. They are not actually adjudicated.

Senator SARBANES. All right. But it is significant. I mean, the amount that could be realized by an individual or private claimant would be noticeably, markedly greater if they went against the assets ahead of the Government.

Mr. MATHESON. Yes, that is true. And the question is whether you want to exclude the Government from this stage altogether.

What we have been trying to do in each stage is to represent the interest of both and, to the extent we can, to be of active assistance to put forward the private claims, sometimes even first.

For example, in this case, we are proposing a preference for certain private claimants, the veterans.

Senator SARBANES. What do you mean by "preference"?

Mr. MATHESON. That is to say a claimant would get off the top, at the beginning of the process, up to $100,000 if he was within the preference category.

Senator SARBANES. How much are those claims?

Mr. MATHESON. Of course, we will not know until we see the submissions. We estimate there were about 2,400 killed and wounded in the Persian Gulf war. Presumably, there would be a few more individuals who are in other categories. And 2,400 times $100,000 is what? $240 million?

Senator SARBANES. No. What is the amount of the claim? The claim might be much more than $100,000.

Mr. MATHESON. That is possible.

Senator SARBANES. I am asking what kind of priority are you giving them. If you said that they would recover fully, then that is a very large priority. You are not saying that. You are saying they will recover up to $100,000.

Mr. MATHESON. That is correct.

Senator SARBANES. So my question is: What does the $100,000 cap represent in relationship to the size of the claims? Because I cannot judge whether what you are telling me is being very forthcoming toward them or not very forthcoming at all.

Mr. MATHESON. It is very difficult to say, for various reasons.

Senator SARBANES. Well, I mean, we need to know that, do we not?

Mr. MATHESON. First, we need to know what they will receive from other sources. I believe, for example, there is an issue about veterans payments. The second thing we would need to know is what the size of their individual claims would be.

Senator SARBANES. I thought you told me before that if they got veterans payments, it would not affect their claim position.

Mr. MATHESON. We will not reduce anything they get from the Department of Veterans Affairs as a result of their Gulf war service, but we are not going to pay them twice for an element of loss. So the amount of the claim here depends upon how much the Department of Veterans Affairs gives them, in part.

But also, there are some relatively difficult to estimate factors, like pain and suffering and so on. It is difficult for us to give you a good estimate as to what those claims might be.

As I say, when we look at the whole universe, we make a very rough judgment that it might come to $3 billion for the whole group.

Senator SARBANES. Well, I have gone on long——

Mr. MATHESON. But again, Senator, it comes down to the question, which is a subjective question, as to whether we want, at this stage of the proceeding, to give all of this recovery to private persons, or whether we want to reserve some for the Government.

Our judgment is that we think the possibility of a proportionate recovery would be appropriate, since we do represent the taxpayers. That is, of course, the Congress' judgment to make.

Senator SARBANES. All right. Thank you.

Senator HELMS. I think it ought to be mentioned, Mr. Chairman, that the able Senator from Virginia, Mr. Robb, has a very definite interest in this legislation himself. He is not able to be here this

morning, but let us say that he is aware of the defects in this legislation.

Now, Mr. Chairman, having already brought to the attention of the committee the questions sent to the Treasury and the Department's response to them, I now respectfully request that these questions be resubmitted as part of this hearing.

And I further ask that the Department's revised responses be included in the record of today's proceedings.

Let me say that it is essential that the responses be returned to the committee in the form to which the committee is accustomed to receiving responses from the various bureaucracies in this city. I do not want a bunch of gobbledy-gook slammed over 26 pages. I want specific answers to specific questions.

And the committee, I believe, has a right to expect that each question will be restated by the respondee and then followed by the Department's response to the specific question.

Senator SARBANES. Well, let me ask the Treasury if they have any comment on this issue? I see representatives from the Treasury here.

Mr. NEWCOMB. Mr. Chairman, I am here from the Treasury.

Senator SARBANES. Yes.

Mr. NEWCOMB. First, let me say, as you said in your opening statement in concurrence with Senator Helms, these are complicated issues, and they raise certain complicated questions.

A lot of these go into questions of business confidentiality concerning applications that we have received and licenses that we have granted.

We are constantly mindful of the hundreds or even thousands of individuals that have applied for licenses, and we respect this business confidentiality matter.

We are also bound by active litigation, where cases are ongoing in the Federal court system that are directly related to many of these issues raised.

But having said all that, let me say, in response to Senator Helms, we are happy to work with you to get you the information that you have requested and provide further answers, as appropriate.

Senator SARBANES. Well, I take it the essential thrust of Senator Helms's observation is that the responses which came back were sort of general in nature, sort of——

Senator HELMS. Nonresponsive.

Senator SARBANES [continuing]. Were, in effect, somewhat vague statements and were not swift in coming. Now I guess you are saying that in some instances you cannot provide specifics because you have a business confidentiality problem. Is that correct?

Senator HELMS. Well, the Senator would yield on that point.

Senator SARBANES. But you could certainly indicate that, I guess, in your answer.

Senator HELMS. Would the Senator yield?

Senator SARBANES. Yes.

Senator HELMS. This committee is perfectly prepared to handle any information of any sort on any security or privacy level.

Now, to contend that you have to worry about confidentiality is nonsense, and I am not going to let you get by with that, because

we protect information here better, I might say, Mr. Chairman, than the bureaucracy.

Now, would you rule on my request?

Senator SARBANES. Well, I am not sure I followed the request.

Senator HELMS. I am just saying I want to hand questions to the Department's representative present today and ask for prompt responses to them.

And it is essential that the responses be returned to the committee in the form to which the committee is accustomed receiving responses from the various agencies, bureaus, and departments.

Senator SARBANES. Well, does the Department have any trouble in doing that?

Mr. NEWCOMB. Well, let me say a number of things first on these responses. Where I have asserted business confidentiality, it is a very legitimate concern that repeatedly we have raised in these kinds of questionings relating to Iraq and other programs.

It is an issue that is forefront in our minds on all dealings on these matters, and it is something we have taken very seriously during the life the program since I have been in it.

But let me say it is the type of thing that further responses could not become a part of the public record or could not become something that is published in——

Senator SARBANES. Well, here is what I understand has happened. You got, I think, 25 questions, and you gave, in effect, one answer as an essay.

Mr. NEWCOMB. Well, let me say——

Senator SARBANES. And I think the Senator wants to resubmit the 25 questions and have you respond individually to the questions.

Now, I do think you may have a problem on business confidentiality, because the private party making the information available may have done it on one set of assumptions.

It is one thing for us to get Government classified information here. It is another thing to get private confidential information, if that has been the understanding under which it was provided.

If that is the case, I think you could indicate as much in your answer. But I do think you ought to take the questions and try to deal with them seriatim as questions and provide responses.

Is there a difficulty in doing that?

Mr. NEWCOMB. No, Mr. Chairman. In fact, we did follow the order of the questions in the response, and the substance of the questions follows in a seriatim fashion. Some of the specifics got into the issues that I have related this morning. We certainly understand and respect the Senator's——

Senator SARBANES. Well, I took a look at that, and I thought you sort of did do it more in the way that I described.

And I think what Senator Helms wants to do, as I understand it, is resubmit these questions and have you deal with them separately as questions and give responses to them.

Now, I assume you can do that, is that correct?

Mr. NEWCOMB. We certainly can.

Senator SARBANES. Well, why do you not go ahead and do that then?

Mr. NEWCOMB. Would it be possible to arrange at this time a meeting, either with the Senator or with staff, so that we can go over some of the constraints that we believe that we have, so that we can——

Senator HELMS. Certainly.

Senator SARBANES. Certainly.

Senator HELMS. We have been prepared to do that all along, sir. I am not talking about you specifically, but we have gotten the dodge here and the dodge there.

Mr. NEWCOMB. Can I respond to that point?

Senator HELMS. Sure.

Mr. NEWCOMB. When the questions did come—and let me say, these are very complicated questions raising complicated issues, which I believe both of you have stated.

And they did come at a time when we had two international crises that we were heavily involved in, both Haiti and Cuba. We did spend a lot of our resources on that.

Statements that I made to your staff were made in good faith, as I have consistently done. And I want to assure both of you that there was never anything more than to give the best answer we could give, given the available resources.

Let me also say that we will be happy to meet with staff and go in to greater detail the problems we believe that we are facing, which, in my opinion, are legitimate concerns that we have. And hearing them on a point-by-point basis, both in terms of volume, both in terms of——

Senator HELMS. Very well.

Mr. NEWCOMB [continuing]. This confidentiality and litigation.

Senator HELMS. Mr. Chairman, let me say to all the gentlemen involved that we have been prepared from the very beginning to sit down and see any suggestion about confidentiality and all the rest of it.

Now, furthermore, I believe—well, I am not going to try to speak for Senator Robb, but I believe that, speaking for myself alone, that I can sit down and suggest modifications of the bill that would pass muster in both the House and Senate.

Now, it will not include the U.S. Government putting itself first, last, middle, or anything else, but to have some regard and compassion for the veterans and for the small businesses, who are affected by this.

May I proceed with my questions?

Senator SARBANES. Yes, sir.

Senator HELMS. Thank you.

Now, either or both of you can answer these questions. If one disagrees with the other, of course I would want to know that.

What is your best estimate of the total dollar amount of U.S. Government claims that fall outside the scope of the U.N. Compensation Commission?

Mr. MATHESON. Our estimate at this point is in the neighborhood of $2 billion. This depends, I think, primarily upon the payments of the guaranteed loans by the CCC.

Am I correct on that?

Mr. NEWCOMB. That is correct. That is the sum total that would be outside. There may be other Government claims that might——

Senator HELMS. You had your hand at your mouth when you said the billion. How many billion did you say?

Mr. NEWCOMB. Two.

Senator HELMS. $2 billion.

What is your best estimate of the total dollar amount of claims of U.S. businesses who are not covered by the U.N. Compensation Commission?

Mr. MATHESON. I think our best estimate of the private U.S. claims would be in the area of $3 billion.

Senator HELMS. $3 billion?

Mr. MATHESON. Yes. That is individuals and corporations. That, of course, that is only the roughest kind of estimate, because we do not know what they will claim.

Senator SARBANES. That is outside of the U.N. system?

Mr. MATHESON. Outside of the U.N. system. A total of $5 billion is our current estimate.

Senator HELMS. The same with reference to the claims of U.S. veterans of the Gulf War who are not covered by the U.N. Compensation Commission.

Mr. MATHESON. I do not think that we have a good estimate for that particular element of it. We know of 2,400 servicemen who were killed or injured during the war.

One would have to be able to know, before estimating what we would pay would be how much they will be receiving from the Department of Veterans Affairs and other sources.

Do you have any more information on that?

Mr. NEWCOMB. No.

Senator HELMS. I guess the representative of the veterans will answer that question.

Now, let us go down rapid fire on these questions, because I am just making a record.

Did the Department of the Treasury issue Iraqi sanctions regulations on August 15, 1990?

Mr. NEWCOMB. Well, can you explain what you mean by "Iraqi sanctions regulations"? We issued regulations on Iraqi sanctions, but we did not issue them, to my knowledge, on August 15, 1990.

Senator HELMS. I have here a document from the Department of the Treasury, dated August 15, 1990, stating that specific licenses may be issued on a case-by-case basis to permit payment, from a blocked account or otherwise, of amounts owed to or for the benefit of a U.S. person for goods or services exported by a U.S. person or from the United States prior to the effective date, directly or indirectly, to Iraq or Kuwait or to the third country for the benefit of the Government of Iraq.

Mr. NEWCOMB. If that says at the top, "General license No. 7"——

Senator HELMS. The answer is yes.

Mr. NEWCOMB. The answer to that is yes. I misunderstood the question.

Senator HELMS. I hope I will not have to read your own document to you to read you these questions.

Outside of the executive branch, with whom did the Department consult before issuing the regulations dated August 15, 1990?

Mr. NEWCOMB. Well, let me say that that decision was made with an interagency consultation, working with people within the Treasury Department, in consultation with the State Department, following the National Security Council process. As far as with whom did we consult——

Senator HELMS. So you do not know.

Mr. NEWCOMB [continuing]. We did not go outside and consult with people. However, being the office responsible for administering sanctions, we received literally thousands of phone calls of all types, including phone calls of people in this kind of situation.

So we heard them. We did not consult with them. It was strictly an interagency consultation with State and the NSC process and senior officials within the Department.

Senator HELMS. Now, then, did the Department of the Treasury issue an amended version of Iraqi sanctions legislation on October 18, 1990?

Mr. NEWCOMB. We did issue an amended version of General License No. 7, if that is—OK. Yes, we did.

Senator HELMS. Now, between the period of August 15 and October 18, 1990, did you meet with anyone outside the executive branch concerning the original version of the regulation or the amended version of the regulation?

Mr. NEWCOMB. Let me say we met with numerous parties during that time period that were affected by the freeze. It is certainly likely that people we met with had a concern relating to that particular issue, but I do not recall any specific meeting.

Senator HELMS. Well, somebody persuaded you to amend it.

Mr. NEWCOMB. As I recall, Senator, the decision was made within the Department following the same consultation process. I do not want to say in any way that we did not hear from parties.

We certainly did hear from parties of many different interests, but this was not something done unilaterally within Foreign Assets Control. It followed the same process.

Let me also say that these same parties met with other people within the executive branch, including the State Department.

Senator HELMS. Well, let me be specific. Yes or no. Did you meet with representatives of the U.S. banks about these regulations during that period?

Mr. NEWCOMB. I have no specific recollection, as you ask the question, of meeting with a bank on this particular question, but I can tell you yes, we met with U.S. financial institutions. We do that routinely.

We also met with U.S. importers, exporters, and everyone else affected by regulations that we had issued.

Senator HELMS. If you want to elaborate after this hearing, Mr. Chairman, I suggest that we keep the record open for a little bit and let him think about his answer to this.

Senator SARBANES. OK.

Senator HELMS. Would you be willing to provide the committee access to your personal calendars for that period?

Mr. NEWCOMB. Of course.

Senator SARBANES. Well, now, let us look at this. I mean, as I understand it, they say they did engage in a broad extended consultation with various parties interested in the regulations.

Mr. NEWCOMB. That is right.

Senator SARBANES. As I think they should do. I mean, I do not have any problem with that.

Mr. NEWCOMB. Well, let me say I met routinely, on a daily basis, with the Deputy Secretary of Treasury, as well as the interagency group chaired at the State Department.

And issues were raised that were brought to our attention on a routine basis as to how we would proceed implementing this program.

Senator SARBANES. This question, I take it, that we are getting at is whether the regulations were done in a way that favors one interest over another. And, of course, that needs to be put out on the table.

If we are going to pass legislation, we need to make a judgment on that score. I mean, we may decide to put them all in on the same basis or put some in on a more favorable basis than others, but we ought to know it.

And this process ought not to work either in the executive branch or in the legislative branch in such a way that it favors a particular party or a particular interest that is not clearly out front as to exactly what is being done and why it is being done, and what the public rationale for doing it that way is.

I take it you would agree with that, would you not?

Mr. NEWCOMB. Well, let me say, we met with parties that were concerned, as did the State Department, as did others within the administration. These issues were moving along on a rapid-fire basis. Many people were affected. Many people had concerns.

What I can tell you is the decisionmaking process, as it progressed, went through many levels of clearances, dealt with many different parties, and we were ultimately not the decisionmaker. The decisionmakers were a larger group that looked at all these questions as we proceeded.

Let me make just one other point here. A lot of these issues are issues that are relevant to ongoing litigation. And so, I want to be very careful in what I say, that it does not affect the position that the U.S. Government has taken.

But I want to also reemphasize that the way we achieved these decisions was through a process which followed every consultative mechanism within that administration, concerning how we ought to handle these issues.

We then took these general licenses, as amended, as well as the other general licenses that were issued, that were done fully in consultation with other departments, and within especially our own Department with the other affected branches, economic policy, international affairs, the general counsel, and we codified all of these in regulations, which also received scrutiny within the State Department and were actively discussed.

So none of these decisions were taken lightly. We followed longstanding practice. We followed applicable law. We followed the procedures that we routinely follow.

Senator HELMS. Mr. Chairman, may I continue?

Senator SARBANES. Certainly.

Senator HELMS. Well, I am sure your process is just as worthy as you say it is, but we need to have the committee's process fairly clear, too.

Now, as I proceed with these questions, what I want you to do, if there is any possibility that you, by responding to a question, might jeopardize some privacy or that sort of thing, you say: "I cannot answer that in open session."

And we will be glad to have a closed session, will we not, Mr. Chairman?

Senator SARBANES. Yes. I think you need to get answers to your questions.

Senator HELMS. I do, too.

Senator SARBANES. And we need to know what the process is. I do not think that we ought to be at the point here that we are asking the Director of the Office of Foreign Assets Control to give the committee his diary. I mean, I see no basis for that at this point.

Mr. NEWCOMB. That is fine, Mr. Chairman.

Senator HELMS. Well, I asked if he would be willing, and he said he would be.

Senator SARBANES. Well, I mean, that is introducing a sort of legal dimension, which does not seem to me at this point to be warranted.

Senator HELMS. OK.

Senator SARBANES. I really do not.

Mr. NEWCOMB. Thank you, Mr. Chairman. But let me just say, by way of following up, the one thing I want to say to the Senator is that we want to cooperate in every way we can to answer the questions.

Senator HELMS. I am glad to hear that.

Mr. NEWCOMB. And I think that has always been our position. But let me also say that we are very mindful and always have tried to be respectful of the business confidentiality concerns. And I am always constantly reminded by my lawyers, within my own agency and within the Department, about litigation risks.

So recognizing those legitimate concerns——

Senator HELMS. Well, I have no problem with that.

Senator SARBANES. That is right. You need to lay that out to us.

Senator HELMS. Yes.

Senator SARBANES. We may well agree with you. But if we do not, then we will have a different problem on our hands.

Mr. NEWCOMB. But I accept your statement, Mr. Chairman, about the diary at this point.

Senator SARBANES. I do not think we ought to get into that area right now.

Senator HELMS. I agree.

Senator SARBANES. All right.

Senator HELMS. But I need to build the case so that the committee can understand what went on.

Mr. NEWCOMB. Let me respond to that. I am not, nor have I ever been, the only player in this. To follow that process, you would need to speak to the key political people within that administration, the Deputy Secretary of the Treasury, the Under Secretary of State, as well as senior people within the National Security Council.

Senator HELMS. We are talking to everybody, including secretaries.

Mr. NEWCOMB. Of the previous administration.

Senator HELMS. No. Your administration.

Mr. NEWCOMB. I am talking about—you are talking about the decisionmaking process——

Senator HELMS. I am talking about both administrations. But in regards to the questions I submitted, we dealt with only your administration.

Now, let me say, we had difficulty with the previous administrations from time to time, and I was just as hard on them as I may appear to be to you now.

Mr. NEWCOMB. I understand, Senator.

Senator HELMS. But I am not going to let this thing pass. All right.

Senator SARBANES. Well, now, could I just clarify one thing?

Senator HELMS. Yes.

Senator SARBANES. The time periods that we were talking about when these various—what did you call them?

Mr. NEWCOMB. These were general licenses, which dealt with the handling——

Senator SARBANES. When was that time period?

Mr. NEWCOMB. Between August 15, 1990, and October 15, 1990, essentially where, in a rapid-fire basis——

Senator SARBANES. Were you yourself there then? Are you a career person?

Mr. NEWCOMB. Yes, Mr. Chairman, I am.

Senator SARBANES. So you were there then.

Mr. NEWCOMB. I was.

Senator SARBANES. But this was during the previous administration.

Mr. NEWCOMB. That is correct. But I do have personal recollection and——

Senator SARBANES. All right.

Mr. NEWCOMB. I want to stress this point, that none of these that were made as to how the policy was to be established was made in a vacuum by the Foreign Assets Control. The Foreign Assets Control——

Senator HELMS. I am sure of that.

Mr. NEWCOMB [continuing]. Heard the issues. And when we heard them, we took them——

Senator HELMS. That may be the problem.

Mr. NEWCOMB [continuing]. To the most senior levels of our Department. I met daily with the Deputy Secretary, who chaired the Treasury effort. He routinely met on the Deputy's committee of the National Security Council. These issues were aired. We sought policy guidance.

And let me say this involved a major trading partner of the United States. Goods were on the high seas. Tankers were on the high seas. The problems were myriad, and these things had to be done on a rapid-fire basis.

Some days we had 15 or 20 issues that needed to be decided. They were aired. There was a period of 2 months when these were 20-hour days or sometimes 24-hour days, meeting with as many

parties as we could meet with to accommodate the very legitimate concerns, the concerns of small business people who, like yourselves, Senator, we had a very great deal of sympathy with. We heard many of their stories.

We attempted to follow previous practice in administering these programs, and we believe we did. We got these issues out to the senior administration officials, who made the decisions which we then implemented.

Senator HELMS. May I ask, did these new regulations issued on October 18, 1990, narrow the scope of claimants who would be eligible to receive licenses?

Mr. NEWCOMB. I would like to answer it, and then I would like to reserve the right to amend it if my answer does not hit it 100 percent.

[The answer to question above may be found in the appendix.]

Senator HELMS. What your recollection is.

Mr. NEWCOMB. My recollection is that the idea was to broaden it so that commitments of U.S. financial institutions would be honored as it related to exporters of goods.

Senator SARBANES. I do think you should supplement——

Mr. NEWCOMB. We will supplement that.

Senator SARBANES. I think you should review your answers and supplement them, because I know this is a complex area, and we want to make sure that the answer is as accurate as you can make it.

Mr. NEWCOMB. What I would like to say, though, for purposes of today, to answer Senator Helms's question, is we were seeking to honor the pre-August 2 commitments of U.S. financial institutions for confirmations they had made and were lawfully bound to, so that it did not necessarily favor one over another.

So I reserve the right to amend that, but that is my recollection now, 4 years later.

Senator HELMS. I have a copy of the October 18 General License No. 7 amended—it says, "Specific licenses may be issued on a case-by-case basis, to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank or a letter of credit reimbursement confirmed by a U.S. bank," and so forth.

Mr. Chairman, I think these documents ought to go into the record for the record.

Senator SARBANES. They will be included in the record.

Senator HELMS. I thank the Chairman.

[The information referred to may be found in the appendix.]

Senator HELMS. Now, did the Department of the Treasury receive any license application between the period of August 15, 1990, and October 18, 1990?

Do you recall?

Mr. NEWCOMB. Did we receive any? I am going to have to go back and check, Senator. I could not answer it, just off the top of my head.

[The answer to question above may be found in the appendix.]

Senator HELMS. All right. Fair enough.

Did the Treasury deny any license applications that were, one, received between the period of August 15 and October 18, and two,

met all the conditions and requirements of the regulations as first published on August 15, 1990?

Mr. NEWCOMB. I do not know. I would have to go back and check that, too, Senator.

[The answer to question above may be found in the appendix.]

Senator HELMS. Well, it is important that we know that.

Mr. Chairman, I am advised that the distinguished Senator from Virginia would like to make a statement, so I will suspend my questions and yield to him.

Senator SARBANES. Certainly. Senator Robb?

Senator ROBB. Mr. Chairman, thank you. I apologize. I had been told that we were on a 10-minute round, and I planned my time accordingly. I thank very much the distinguished Senator from North Carolina.

Senator SARBANES. Well, actually, since it was just the two of us, we have been free floating, so to speak.

Senator ROBB. I kept waiting for the lights to go on or off, and I was not certain that that was going to occur. I do appreciate the Senator from North Carolina's courtesy and yours, Mr. Chairman.

Mr. Chairman, I have been involved in this issue for over 2 years and on some of the same concerns shared by the Senator from North Carolina and the chairman of the committee.

I would like to make just a very brief statement regarding this particular act. I am not going to get into the specificity that the Senator from North Carolina is pursuing at this point, but I think that is important. And I will be very interested in the responses to those particular questions.

I believe that a very serious injustice has been done in this particular case to the American exporter, and I am obviously interested in rectifying that particular injustice.

A lot of this hearing has and, I suspect, will continue to focus on the minutiae of letters of credit, international transactions, economic emergency powers, but it ultimately boils down to whether American companies should be afforded fair treatment by the U.S. Government.

I am referring specifically to an inequity that stems from the invasion that has already been discussed, which resulted in the freeze of the Iraqi assets by the United States.

Those assets, which remain frozen today, and obviously are the feature that has prompted this particular hearing, were blocked to prevent Iraq from using those assets to support its aggression against Kuwait and its allies.

Simply put, that freeze was designed to hurt Iraq, but it is now hurting American companies that shipped goods to Iraq prior to the Persian Gulf war and have not yet been paid.

Just a very brief explanation, because I think it goes to the point. At the urging of the U.S. Commerce Department, trade with Iraq was on the upswing prior to the Persian Gulf war.

Unfortunately, in the midst of this ongoing trade with Iraq, Saddam Hussein invaded Kuwait. President Bush froze all Iraqi assets in the United States, and a handful of companies got caught in the lurch.

That handful shipped their goods under the guarantee of letters of credit, met all the requirements set forth in their credits, and

were a mere electronic transfer, nothing more than a keystroke on a computer, away from receiving their payments for goods already shipped when that freeze was imposed.

Although the Iraqi banks which issued the letters of credit have funds on deposit with U.S. correspondent banks to pay these credits, the freeze prevents the American businesses holding these credits from obtaining what is lawfully theirs. And I simply want to try to see this situation resolved as equitably as possible once and for all.

I am, therefore, very pleased that the administration has proposed the bill that is pending before this committee and is the subject of this hearing today.

I believe it is imperative, however, that any legislation designed to settle claims on Iraqi assets contain a measure of relief for the particular American companies that were caught in an exceptionally unfortunate predicament.

Therefore, Mr. Chairman, I look forward to working with you, as the ranking member, and others to see if we cannot find an equitable resolution of this long-time problem.

I fully recognize that there are other claimants, but in this situation, there is a basic equity that I think has been set aside in the pursuit of other interests that I do not think can be ignored without consequences, both to the individual companies concerned and to the whole understanding that we have in terms of international trade.

For that reason, I very much welcome your holding hearings on this particular bill. And I do indeed look forward to working with you.

Senator SARBANES. Well, that is a very thoughtful statement. I think it does underscore the problem of when you have claims which greatly exceed the amount of assets available to meet the claims.

And then you have different parties to the claims asserting a particular line of reasoning as to why they should get priority. And that is a difficult question to answer.

I mean, we may have a veteran who says: "Well, I ought to have priority, because I suffered this kind of personal injury and pain and suffering and so forth." So it is a tough question, and it needs to be addressed.

Now, some of our discussion earlier was around whether the Government ought to not come in at the first crack, which would provide more money to meet the private claims, and therefore would ease some of these constraints. At the moment, if the general pool is only going to get 20 percent, then you do not want to be in the general pool. You want to be at the front of the line and hopefully get 100 percent.

Maybe if you can get 50 percent, there is a little less pressure on you to do that. Although, obviously, there would still be some pressure there. But I think this is a very tough question.

Obviously, people are hearing from different interests that say: "Well, we ought to get better compensation."

And we have to lay it all out. I do not want anyone getting an unfair advantage, that is for sure. But it needs to be carefully examined.

Senator ROBB. Mr. Chairman, could I just say that I certainly understand, and particularly with respect to veterans claims. I am very sensitive, because I know of the concerns, and I have been historically very supportive of veteran interests, and certainly am in this case.

The question here has to do with a fully completed transaction under the international rules, when the goods have been shipped and delivered.

Everything that the shipper was required to do had been met. And it was just the fortuity, or lack thereof, of when the intervention occurred, as to why that particular shipper did not get paid.

And to take the fortuity of when the decision was made to hold the assets already in correspondent banks and apply them to other very legitimate and important needs is a question that, it seems to me, involves the priority of taking a look at those claims.

I do not denigrate the other claims in any way, but this was simply a matter of timing on the part of the United States that otherwise interrupted a completed transaction.

The money would not have been inhibited but for the action taken by the President, understandably, to prevent something else from happening.

But the money was still there when additional claims ensued, and then the question is whether that pot ought to be available to every claimant in the same degree, or whether the initial private claims ought to be taken up first, so that those transactions that would not otherwise have been in the pipeline are equitably resolved.

Senator SARBANES. Yes. I think it is a very reasonable question. I do not know that the answer is obvious, but it needs to be very carefully considered.

Senator HELMS. If the Senator will yield——

Senator ROBB. I would be happy to yield.

Senator HELMS [continuing]. There are, as I understand it, a number—and not maybe a large number—of businesses or individuals or both, who are caught in this trap. At the same time the U.S. Ambassador was in Saddam Hussein's office patting him on the back goods were shipped. And then the payment was in the U.S. bank to be made for those.

Then the curtain came down, and we said: "You cannot have your money. We may let you have a percentage."

Now, if they had had any notion of what was going on, it would have been different. But I do not think there are many of these cases—I know of only one or two. I think there are one or two in the Senator's state and other states, maybe. It may be that we could work that part out.

Senator SARBANES. Go ahead. Go ahead.

Senator HELMS. All right. Thank you.

Senator SARBANES. Are you finished, Chuck?

Senator ROBB. Mr. Chairman and Senator Helms, I thank you both for your courtesy.

Senator SARBANES. Go ahead, Jesse.

Senator HELMS. Well, let me ask: Is it normal procedure to deny an application that meets the criteria of the regulations in effect at the time the license is submitted?

Mr. NEWCOMB. We follow the criteria in our license, in our regulation, in issuing licenses.

Senator HELMS. Do you want me to ask the question again?

Mr. NEWCOMB. We follow the criteria of our regulations in issuing licenses. I think that was your question.

Senator HELMS. Well, what would the regulations be in that case? What would be your implementation of the regulation, and which regulation would you implement?

Mr. NEWCOMB. Let me say——

Senator HELMS. Do you understand what I am saying?

Mr. NEWCOMB. Yes, I do, Senator. I think we need to go back and look at the situation of August 1990, when what we had was chaos in terms of coordinating an international sanctions program with 92 countries, 34 tankers on the high seas, exporters that Senator Robb has told about and you have told about and we certainly heard about of all different sizes that were involved in having fairly large contracts ongoing.

So it is within that context that we were making our decisions, and at the same time getting regulations out.

Senator HELMS. Well, is that your answer to my question?

Mr. NEWCOMB. It is, and what I would like to do is go back and see if I can get you a fuller answer on that.

[The answer to question above may be found in the appendix.]

Senator HELMS. All right. I am perfectly willing to defer that, but let us hear from you as quickly as possible.

I had a followup question that you will probably want to defer, as well. And I am going to put the words first, because the question is: Is it Department of Treasury policy to deny license applications that meet the criteria of the regulations in effect at the time of receipt?

Mr. NEWCOMB. Well, if the option is there, I will defer it.

[The answer to question above may be found in the appendix.]

Senator HELMS. Now, you participated in the interagency group that agreed to amend General License No. 7, did you not?

Mr. NEWCOMB. I participated in the interagency groups. I met daily three or four times a week, at least, with our Deputy Secretary. And I went daily or three or four times a week to the State Department and was a participant in all of these issues.

But I will say, because of the size and complexity and the many issues that were involved in this war-time situation and relating that I may not have been at every meeting——

Senator HELMS. That is a given. What I am driving at, as you know, is I want to know your recollection, to the best of your memory, of the rationale for the change between August and October.

And did you know at the time that U.S. banks would receive the lion's share of benefit from the amended regulation, or did you not know?

Mr. NEWCOMB. Let me say, I would have to go back and ask my staff, my chief counsel, and every other person that was involved in this type of thing and try to get you a complete answer, because I do not want to just say off the top of my head.

[The answer to question above may be found in the appendix.]

Senator HELMS. Fair enough. Fair enough.

Mr. NEWCOMB. But one thing I do want to stress is to lay out the situation that existed in August 1990. These were sometimes 3 days without sleep. Everyone in my office was pressed to capacity 7 days a week.

We had many meetings, because we tried to be as responsive as we possibly could. People were routinely filling in for me in interagency consultations.

Issues were coming up rapid fire, sometimes a dozen a day, that needed to be decided very quickly. And we used the best available information that we had. And we believed there was integrity to those decisions. But in terms of——

Senator HELMS. I do not doubt that.

Mr. NEWCOMB. Thank you, Senator. In terms——

Senator HELMS. I do not doubt that it was a tough time, and that you did the best you could. That is not the point. The point is: Was a mistake made?

Mr. NEWCOMB. I will answer that now or defer.

Senator HELMS. I want you to defer it. I want you to think about it.

Senator Robb referred to a case, and we may be referring to the same case. I did not hear him address any dates, but I know of one company that submitted an application before October 18. The application met the specifications of the regulations in place at that time, the time of receipt.

After the regulations were amended, the company's license was denied. Now, what do you think of that action by our Government? You say you followed the regulations. Did you follow them in this case?

Mr. NEWCOMB. I am not aware of that particular case. And what I would like to do is go back and look at the specifics of that.

[The answer to question above may be found in the appendix.]

Senator HELMS. All right.

Mr. NEWCOMB. But let me just go back to your earlier question, as I think about it. Do I believe a mistake was made?

I do not want to leave that open-ended where there is anything that would infer that there might be a yes answer. No, I do not believe a mistake was made.

Sitting here today before you, hearing that question for the first time, I cannot imply that I believe a mistake was made in terms of anything that took place.

Recognizing the process that was in place, the good faith that I believe we, all of my staff were working with, and the administration officials at the time, were struggling with some very difficult issues that needed resolution.

So I have to just say categorically no, I do not believe a mistake was made. That is not to say that we will not go back——

Senator HELMS. Would you be willing to take a look at it?

Mr. NEWCOMB. Of course.

Senator HELMS. And would you be willing to take a look at——

Senator SARBANES. I think we need to do more than take a look at it. You are going to have to justify the rationale for it.

Mr. NEWCOMB. And I think we have, Mr. Chairman and Senator Helms.

Senator HELMS. You have stated it better than I stated it.

Mr. NEWCOMB. We have met with——

Senator SARBANES. I do not have a dog in this fight—at least not yet. I mean, I have not heard from a particular company, and maybe that will develop. But, you know, you have limited money and a lot of claims. So people are not going to get 100 percent.

Then people say: "Well, this particular category ought to get 100 percent for the following reasons."

Now I am told you had a situation where you had one set of regulations where they qualified for a license. The regulations were changed, and they then did not qualify for a license.

Obviously, you are going to have to explain the rationale that warranted changing the regulation. Perhaps you had a very good rationale for it. People may look at it and say that yes, the previous regulation had a flaw in it, which was corrected.

On the other hand, it may have developed in such a way that worked to the disadvantage of one and the advantage of another, which on examination we would say: "How come that happened?"

Mr. NEWCOMB. May I respond to this? First of all, let me say we would not have corrected our regulation had we not believed there was a flaw in it. Second, in terms of Senator Helms's——

Senator SARBANES. Yes, but obviously, there is a process of further judgment about that. I am not suggesting that you did not think there was a flaw when you did it. But upon further examination, you are going to have to be able to sustain that position.

Mr. NEWCOMB. That is right. But let me say, these regulations were drafted by our lawyers following that process that I told you about. We relied on our lawyers providing us legal advice.

But let me go back to what Senator Helms's question was relating to this situation that Senator Robb laid out. We have met with parties. I believe we have dealt with at least one of the issues, perhaps more, Senator, that you have been concerned about.

We will continue and be delighted to sit and give you the information that you have requested. And we have made an attempt, under our regulations, to be forthcoming in that regard.

Senator HELMS. Well, do I infer that this legislation could agreeably be modified from the standpoint of you two and your respective Departments to take care of what Senator Robb and I both believe to be inequities?

Mr. NEWCOMB. Let me respond by saying that this is something that I would like to go back and talk to Mr. Matheson about. I cannot commit to that now, hearing it again.

Senator HELMS. I really do not want to be difficult about this thing, and I have no dog in this fight either. I have met some of the folks involved, just as Senator Robb has apparently.

But right is right. I have to ask this question: Did you two ever have any reservation, expressed or unexpressed, that these modifications between August and October would benefit a specific group of claimants? Did you ever have any conversation about that, any speculation about it?

Mr. MATHESON. I do not recall having any conversations with Mr. Newcomb at all on this.

Mr. NEWCOMB. I do not recall discussing this with Mr. Matheson, although we have met on issues like this from time to time.

Senator HELMS. Well, what was your understanding of the composition of that group?

Mr. NEWCOMB. The group at the State Department was chaired then by either an Assistant Secretary or an Under Secretary, and it had representation from Mr. Matheson's office, as well as all the other affected bureaus.

Senator HELMS. Who chaired the group?

Mr. NEWCOMB. It would be the Assistant Secretary for the Economic Bureau. His name is McAllister. From time to time, the NSC would meet, and the principal from the State Department at the time was Bob Kimmitt.

Senator HELMS. Bob?

Mr. NEWCOMB. Kimmitt, Robert Kimmitt.

And from the Treasury Department, it was John Robson, who was the Deputy Secretary, and my boss at the time, who was the Assistant Secretary for Enforcement, Peter Nunez.

Senator HELMS. Mr. Chairman, I am going to stop my list of questions here, because we have spent a lot of time, and we have another panel.

But let me conclude with this observation and a question, perhaps. It was said earlier that efforts were being made to collect the rest of the debt for Iraq.

In all honesty, when was the last time, and under what circumstances, that you know of, did the State Department or the Department of Commerce try to collect any more money from the Government of Iraq for claims that fall outside the scope of the U.N. Claims Commission?

Mr. MATHESON. We have not really had diplomatic discussions on this question, as you might guess, with Iraq since the war began.

We have made other efforts, including the creation of the U.N. Compensation Commission and putting forward U.S. claims before it. And we are making this effort today.

There is the possibility, I suppose, that at some future date, we may be in a position where we will have diplomatic discussions with Iraq. But at the present time, of course, it is not——

Senator HELMS. So you have done nothing, really. That is just in abeyance. Nothing is being done to negotiate or arrange further collection of money to pay the debts of Iraq to——

Mr. MATHESON. I am not aware of any discussions with Iraq about further payments.

Senator HELMS. Well, with anybody. Have you been to any meeting where this subject was discussed?

Mr. MATHESON. I have not.

Senator HELMS. Mr. Newcomb?

Mr. NEWCOMB. No, Senator, I have not.

Senator HELMS. Well, you see, that is the point. You put the U.S. Government in, and the ability for private and military claimants to recoup a large percentage of their claims is diminished.

I think the U.S. Government might be encouraged to do something about this. You know, there are all sorts of ways to skin a cat.

Mr. MATHESON. I think you understand, Senator, that until sanctions are lifted, there really is not any possibility of getting additional resources out of Iraq.

Senator HELMS. I understand that.

Mr. MATHESON. So that is a future possibility.

Senator HELMS. Mr. Chairman, I have no more questions. I may want to submit some in writing.

But I would expect written answers to the things that we agreed that you were going to respond to, that you cannot recall sufficiently to respond orally.

I thank you for being here, and I yield, Mr. Chairman.

Mr. MATHESON. Mr. Chairman, could I add just one point on one of the points made by Senator Helms?

Senator SARBANES. Certainly. Yes.

Mr. MATHESON. I cannot comment on the administrative process the Treasury went through. If there is anything to be corrected administratively, that is one thing.

I would hope, though, that problems are not created by putting in this legislation a special priority for one group of claimants over another beyond the fact that we all agree that the veterans need to have special preference.

Senator SARBANES. Well, here is your problem. If you changed your regulations in a way that advantaged one group over another, then we need to know the rationale for doing that, because the group disadvantaged is obviously complaining about it and feels that the process was not equitable.

Now, we need to know whether that is the case. How you correct it is difficult, because you may create other inequities in the process of trying to correct it. But I think you all need to do some work here.

Questions are obviously being raised about how this whole process worked, and the problem is exacerbated by the fact that, as I said, you have limited assets and claims well in excess of them.

So if people can find a way to get a privileged position, they will get 100 percent. Of course, that makes it harder on the people that are left behind.

I guess the question is being raised that the change in the regulations, in effect benefited a certain category and disadvantaged another category.

Mr. NEWCOMB. Mr. Chairman, that is something I want to, as I said with Senator Helms, go back and take a look at. I cannot right now, having this discussion, just give an opinion, other than to say the process was followed as I have laid it out. And the senior people were specifically briefed on it.

Senator SARBANES. If you are going to correct it, I think it is going to have to be done on a general or a class or a category basis and not——

Senator HELMS. Right.

Senator SARBANES. You cannot have a process where the squeaky wheel gets oiled and some other squeaky wheel does not, when it is in roughly the same status or condition.

That is no way to make policy, although the Congress comes at you hard because one or another of us hears from those particular squeaky wheels. But they may make the point that the general policy was not adequate or appropriate.

Mr. NEWCOMB. Let me say, it has been a longstanding operating principle that similarly situated parties are treated equally, so I certainly do not disagree with that.

Senator SARBANES. Well, that is right. OK.

Anything else?

Senator HELMS. I have to absent myself for a little while, but I will be back.

Senator SARBANES. All right. I am going to bring the other panel on.

Senator HELMS. Right. Before I part, I want to ask that this hearing record be printed.

Senator SARBANES. I assume that conforms with the committee rules.

Senator HELMS. Yes.

Senator SARBANES. And if it does, I would be happy to do it. Gentlemen, thank you very much. I am sure we will be in further consultation.

If the other panel would now come forward, we would be happy to take their testimony.

It has been a long morning, and I take it you have been here and heard a lot of the presentations. Why don't I just start with you, Mr. Block, and I will move right across the panel.

If you could limit your statements to about 10 minutes we would greatly appreciate it, so there will be sufficient time for questions.

STATEMENT OF L. THOMAS BLOCK, SENIOR VICE PRESIDENT, CHEMICAL BANKING CORP.

Mr. BLOCK. OK. Mine is pretty short.

My name is Tom Block, and I am senior vice president of Chemical Bank. I am here to testify on behalf of the Bankers' Association for Foreign Trade, BAFT.

BAFT is a trade association of virtually all U.S. banks that are actively involved in international banking, including especially the financing of U.S. trade.

I have been asked to testify on the issue, as Senator Robb said, on the minutiae of letters of credit. I will address that. Questions have arisen in this discussion as to payment of certain letters of credit under the Iraqi freeze order.

The letter of credit is used by all of our member institutions for financing trade transactions and is the cornerstone of international trade banking.

The overriding importance of the letter of credit is that it allows buyers and sellers of goods in different countries, who do not know each other, to conduct transactions that otherwise would not occur because of credit or other risks.

Anything that undermines the legal validity of letters of credit directly undermines the flow of international trade and consequently U.S. jobs.

Let me briefly explain a typical letter of credit transaction, since, obviously, it is going to be discussed in this debate.

Initially, a customer of a bank, known as an account party, will request their bank to issue a letter of credit for the benefit of a third party, known as the beneficiary or seller of goods.

Usually, the account party is a buyer of goods from a seller, which is unwilling to ship its goods on open account.

Open account, Senator, is when you buy something from a store, and you are going to send a check. The buyer and the seller know each other well, and so they do not demand any additional financial arrangements. And this is how a great deal of trade is indeed financed.

On the other hand, in a letter of credit transaction the seller wants assurance from the buyer that if the seller ships its goods, it will be paid by the account party's bank. The seller thus does not have to rely on the credit of the buyer to pay. Instead, the seller can rely on the credit of the buyer's bank.

In this regard, the buyer's bank issues a letter of credit in favor of the seller, which is a separate legal contract assuring the seller it will be paid against the presentation of certain documents, usually shipping documents.

The two critical legal principles of letter of credit law are that the obligation of the issuing bank to pay the beneficiary is separate from any underlying contract between the buyer and the seller, and the issuing bank only pays against the receipt of documents that strictly conform with the terms of the letter of credit.

Because a buyer's bank, in this case that we are discussing an Iraqi bank, a foreign bank, is often unknown to the seller, the issuing bank will often arrange to have a bank in the seller's country either advise or confirm the letter of credit which it issues.

If a local bank becomes a confirming bank, it becomes liable to the seller under the terms of the letter of credit. In other words, the seller transfers its risk from the importer's bank to the bank that is confirming the letter of credit.

Should the local bank serve only as an advising bank, that bank acts merely as an agent for the issuing bank and does not become liable to the seller.

Proposals have been made that violate these established principles of commercial law by requiring the payment of blocked Iraqi funds to U.S. beneficiaries, U.S. sellers, of letters of credit which have not complied with the terms of the letter of credit from the issuing bank.

In addition, the proposals could require advising U.S. banks to pay beneficiaries or U.S. sellers out of blocked funds, even though such banks acted solely as agent for the issuing Iraqi bank.

In this regard, the proposals appear to be based on a misconception that Iraqi banks, which issued letters of credit on behalf of Iraqi buyers of U.S. goods, earmarked funds in special accounts at advising U.S banks to pay the letters of credit.

This was not the case, as payments on letters of credit are generally made from a bank's general funds, not earmarked funds.

In addition, advising banks are not liable to the beneficiary on the letter of credit of the issuing bank. To suggest that beneficiaries or U.S. sellers should be paid on letters of credit without complying with the documentation requirements or to suggest that advising bank funds are earmarked to letters of credit would undermine the fundamental legal principles in this area and cast a cloud of uncertainty over the willingness of U.S. banks to participate in letter of credit transactions financing U.S. exports.

These proposals, in effect, would create a special priority for certain U.S. claimants in the distribution of blocked Iraqi assets.

This violates fundamental principles of legal fairness, as such payments may result in there being insufficient funds to pay other very legitimate claimants. It is simply not wise public policy to legislate claims priorities on an ad hoc basis in response to particular constituent interests.

We believe the proposals could seriously impair the financing of U.S. exports and other international transactions. Therefore, BAFT strongly urges the committee to reject any amendment that may be offered concerning payments of letters of credit from blocked Iraqi funds.

Senator SARBANES. Thank you very much, Mr. Block.

[The prepared statement of Mr. Block follows:]

PREPARED STATEMENT OF MR. BLOCK

My name is Thomas Block and I am a Senior Vice President of Chemical Bank. I am here to testify on behalf of the Bankers' Association for Foreign Trade (BAFT). BAFT is a trade association of virtually all U.S. banks that are actively involved in international banking, including especially the financing of U.S. trade. I've been asked to testify on the issue of letters of credit, as questions have arisen as to payment of certain letters of credit under the Iraqi freeze order. The letter of credit is used by all of our member institutions for financing trade transactions, and is the cornerstone of international trade banking. The overriding importance of the letter of credit is that it allows buyers and sellers of goods in different countries to conduct transactions that otherwise would not occur because of credit or other risk considerations. Anything that undermines the legal validity of letters of credit directly undermines the flow of international trade.

Let me briefly explain a typical letter of credit transaction. Initially, a customer of a bank, known as the Account Party, will request their bank to issue a letter of credit for the benefit of a third party, known as the Beneficiary. Usually, the Account Party is a Buyer of goods from a Beneficiary (Seller), which is unwilling to ship its goods on open account terms. Instead, the Beneficiary (Seller) wants assurance from the Account Party (Buyer) that if the Seller ships its goods, it will be paid by the Account Party's bank. The Beneficiary (Seller) thus does not have to rely on the credit of the Buyer to pay; instead, the Seller can rely on the credit of the Buyer's bank.

In this regard, the Buyer's bank issues a letter of credit in favor of the Beneficiary (Seller), which is a separate legal contract assuring the Beneficiary it will be paid against the presentation of certain documents, usually shipping documents. The two critical legal principles of letter of credit law are that the obligation of the Issuing Bank to pay the Beneficiary is separate from any underlying contract between its Account Party (Buyer) and the Beneficiary (Seller) and the Issuing Bank only pays against the receipt of documents that strictly comply with the terms of the letter of credit.

Because a Buyer's bank is often unknown to a Seller, the Issuing Bank will often arrange to have a bank in the Seller's country either advise or confirm the letter of credit which it issues. If a local bank becomes a Confirming Bank, it becomes liable to pay the Seller (Beneficiary) under the terms of the letter of credit. Should the local bank serve only as an Advising Bank, it acts merely as an agent of the Issuing Bank and does not become liable to the Seller (Beneficiary).

Proposals have been made that violate these established principles of commercial law by requiring the payment of blocked Iraqi funds to U.S. Beneficiaries of letters of credit which have not complied with the terms of the letter of credit with the Issuing Bank. In addition, the proposals could require Advising U.S. banks to pay Beneficiaries out of blocked funds, even though such banks acted solely as agent for the Issuing Iraqi Bank. In this regard, the proposals appear to be based on a misconception that Iraqi banks, which issued letters of credit on behalf of Iraqi buyers of U.S. goods, earmarked funds in special accounts at Advising U.S. banks to pay the letters of credit. This was not the case, as payments on letters of credit are generally made from a bank's general funds, not earmarked accounts. In addition, Advising Banks are not liable to the Beneficiary on the letter of credit of the Issuing Bank. To suggest that Beneficiaries should be paid on letters of credit without complying with the documentation requirements of the credit or to suggest that Advis-

ing Bank funds are earmarked to pay letters of credit would undermine fundamental legal principles in this area and cast a cloud of uncertainty over the willingness of U.S. banks to participate in letter of credit transactions financing U.S. exports.

The proposal would, in effect, create a special priority for certain sellers of U.S. goods in the distribution of blocked Iraqi assets. This violates fundamental principles of legal fairness, as such payments may result in there being insufficient funds to pay other claimants. It is simply not wise public policy to legislate claims priorities on an ad hoc basis in response to particular constituent interests.

We believe the proposals could seriously impair the financing of U.S. exports and other international transactions. Therefore, BAFT strongly urges the Committee to reject any amendment that may be offered concerning payments on letters of credit from blocked Iraqi funds.

Senator SARBANES. Mr. Violante?

STATEMENT OF JOSEPH A. VIOLANTE, LEGISLATIVE COUNSEL, DISABLED AMERICAN VETERANS

Mr. VIOLANTE. Thank you, Mr. Chairman.

On behalf of the Disabled American Veterans and its women's auxiliary, I wish to thank you for this opportunity to present our views on the Iraqi claims legislation currently pending before this committee or subcommittee.

Initially, let me commend this legislation for recognizing the sacrifices made by this country's veterans during the Persian Gulf war and for placing these veterans and their dependents first with respect to claims filed against the Iraqi Government.

All too often, the citizen-soldiers of our country's wars are forgotten once the fighting has subsided and the warrior has returned to civilian life.

Let me also state that we are certainly not opposed to compensating veterans, in addition to what they would receive, either through the Department of Defense or the VA. However, there was language in the bill, as well as in the report from the House, that certainly concerned us.

We are also somewhat concerned that this type of legislation would somehow lessen our Government's legal and moral obligation to continue to care for the wartime veterans of our countries' military.

We heard this morning in testimony that this act was not designed to take away any of the benefits that veterans would receive, and we appreciate that.

As long as this act would provide for additional benefits above and beyond what a veteran would receive from the Government, we have no objections.

We still have concerns, however, about the offsets that the Veterans Administration might make against the veteran who has presented a claim and has been compensated.

Currently, we are fighting with the Department of Veterans Affairs over recoupment of money paid to military personnel as an incentive for the military downsizing, to leave the military.

They are paid a lump sum settlement. It has nothing to do with disability severance. It is just an incentive to leave the military.

However, the VA has offset those veterans' compensation. The veteran does not receive his VA compensation until all the money he received as an incentive to leave the military has been recouped. So our concern is that the same does not happen here.

Any veteran who receives money for additional losses that may not be compensated by the VA should not have that amount reduced from his VA compensation or money that he may receive from the military through the Department of Defense.

As long as those conditions are met, we certainly have no objections to this legislation.

Thank you. That ends my comments, and I would be more than happy to answer any questions.

Senator SARBANES. Thank you, sir.

[The prepared statement of Mr. Violante follows:]

PREPARED STATEMENT OF MR. VIOLANTE

Mr. Chairman and Members of the Subcommittee: On behalf of the 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I wish to thank you for this opportunity to present DAV's views on the Iraq claims legislation currently pending before the Congress.

Initially, let me commend the efforts of the authors of the legislation and this Subcommittee in placing veterans of the Persian Gulf War and their dependents first with respect to claims filed against the Iraqi Government. This legislation recognizes the sacrifices made by this country's veterans during the Persian Gulf War. All too often, the citizen-soldiers of our country's wars are forgotten once the fighting has subsided and the warrior returns to civilian life.

The DAV, founded in 1920 and Congressionally chartered in 1932, has been actively involved, presenting both oral and written testimony in every major piece of legislation affecting disabled veterans, their dependents and survivors. The DAV works for the physical, mental, social and economic rehabilitation of wounded and disabled veterans, obtains fair and just compensation, adequate medical care, and suitable gainful employment for veterans who became disabled in service to their country. These services are provided by a core of 233 trained National Service Officers located at 68 offices throughout the country, by ten National Appeals Officers located in Washington, D.C., and by three Judicial Appeals Representatives who practice before the United States Court of Veterans' Appeals, as well as members of our professional staff at our headquarters in Cincinnati, Ohio and Washington, D.C.

While the DAV is certainly supportive of the principle of ensuring that there is just compensation for any damages or injuries received by a veteran or his or her family as a result of the war in the Persian Gulf, we are very concerned about the precedent that H.R. 3221, as amended and passed by the House, would set if enacted. In recent history, veterans have always been cared for by the VA (previously Veterans' Administration, currently the Department of Veterans Affairs) with respect to the injuries received in service to their country. However, the Iraq claims legislation establishes a procedure whereby veterans could be compensated directly from the assets of the "foreign enemy" government. This precedent could have far-reaching ramifications which could adversely impact upon the current VA system. Further, in future engagements, claims would be limited or expanded based on the amount of any assets that could be frozen by our country, thereby, creating an inequity in the amount recoverable by a veteran or his or her dependent.

Of utmost concern to us, however, is the provision in the bill which would limit the sum of compensation received from the U.S. Commission and the awards from other sources to an amount not to exceed the amount of the claim. We are extremely concerned that this provision would limit the amount of compensation a veteran or his or her dependent or survivor could receive from the VA based on the veteran's service-connected disabilities or cause of death. Simply stated, these benefits would be offset and/or limited by the amount of the "claim."

Perhaps these frozen assets—which would otherwise be offset from VA compensation payments—could be given to the Department of Veterans Affairs to help reduce the long delays in the receipt of VA health care and the growing backlog of veterans' compensation claims.

Mr. Chairman, America's veterans' programs are seriously underfunded. The realities of the Fiscal Year (FY) 1995 budget provides veterans with a very bleak picture of the VA's ability to provide quality benefit determinations and health care services in a timely manner. Under the so-called "pay-go" provisions of the Budget Enforcement Act of 1990, any new programs must be funded from existing programs within the agency or department. In other words, Mr. Chairman, in order for the VA to pay compensation to Persian Gulf Veterans suffering from undiagnosed ill-

nesses, such as the so-called "Persian Gulf Syndrome," as contained in legislation currently pending before Congress, the VA must reach its hands into the pockets of other service-connected veterans and their families to obtain the revenues necessary to fund this new program.

Ideally, Mr. Chairman, funds from the frozen Iraqi assets could be used to help support a full range of programs to assist Persian Gulf War veterans, their dependents and survivors. These additional funds could be used in programs such as compensation for service-connected disabilities resulting from the undiagnosed illnesses or so-called "mystery ailments," for research programs designed to determine the cause or causes of these ailments and their cure, for the health care needs of Persian Gulf War veterans, for counseling services and other worthy programs designed to assist the veterans of the Persian Gulf War, their dependents and survivors.

Finally, Mr. Chairman, the DAV concurs in the sense of the Congress, as contained in this legislation, that individuals who served in the armed forces of Iraq during the Persian Gulf War should not be admitted to the United States as refugees. At our August 1994 National Convention in Chicago, Illinois, our delegates adopted a resolution which called upon our government to not allow former Iraqi troops to resettle in this country.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you may have.

Senator SARBANES. Mr. Parrish?

STATEMENT OF THOMAS C. PARRISH, VICE PRESIDENT, MONK-AUSTIN INTERNATIONAL, INC.

Mr. PARRISH. Mr. Chairman, I appreciate this opportunity to testify before your subcommittee this morning. My name is Tom Parrish. I am a vice president of Monk-Austin International.

Our company sources leaf tobacco from the United States and many other countries, processes it, and sells to manufacturing customers around the world.

I am here today to tell you about a problem that has cost our company a lot of money, $6.5 million to be precise. Our problem is the result of the way the U.S. Government has applied the economic sanctions against Iraq. I understand there are several other companies with the same problem.

Although our fact situations may vary slightly, we all shipped goods to Iraq well prior to August 2, 1990, under letters of credit, and we have not been paid due to the block on Iraqi assets.

We are seeking an administrative remedy. But if the executive branch cannot be persuaded to help, we ask that Congress enact remedial legislation.

Senator SARBANES. Do each of you have copies of the statements that the others are giving?

Mr. PARRISH. No.

Senator SARBANES. Could the staff make sure that each of the witnesses has copies of the others' statements? Mr. Block, I am particularly interested that you follow this statement, because it involves the issue on which you testified.

Mr. BLOCK. I have a copy here.

Senator SARBANES. And when we get to questioning, I may want to address some questions to you about this testimony.

Please go ahead, Mr. Parrish. I am sorry to interrupt.

Mr. PARRISH. This morning, I took some notes on some of the earlier testimony, and I noted Mr. Matheson's statement of the administration's laudable intentions "to create a fair and orderly system for providing compensation for claims."

Unfortunately, the policies and actions of OFAC to date toward U.S. banks have already resulted in—and this is to use Mr. New-

comb's own words—"a piecemeal approach to the settlement of Iraqi claims."

So passage of the Iraq Claims Act of 1993 is not the remedial legislation that we need. It will really hurt us.

Since Monk-Austin buys and sells tobacco all over the world, we rely on letters of credit to finance our transactions. Our employees are experts in utilizing letters of credit, because that is normally the mechanism we use to get paid.

We have been in business for over 100 years, and we have never had a problem like the one I am about to describe. Iraq is one of our long-time customers. We have been selling tobacco to Iraq's State Enterprise for Tobacco and Cigarettes for many years.

We have sold a lot of tobacco to SETC over the years, and we never had a problem getting paid, not until 4 years ago, that is.

In 1989 and 1990, we sent three shipments of tobacco to Iraq. Payment was to be made pursuant to letters of credit issued by Rafidain Bank of Baghdad.

We understood that Rafidain Bank had funds on deposit in various U.S. banks to facilitate commerce between Iraq and the United States, and that we would be paid from those funds.

We did not think we were taking a commercial risk. Again, SETC had always paid us on time by letter of credit. In all respects, then, these were routine transactions utilizing routine payment mechanisms.

We shipped the goods, and we presented the required conforming documents through authorized banking channels. Our goods were accepted by the Iraqis, and our documents were accepted by the U.S. banks.

The problem is, this time we have not been paid. Before we were to be paid, Iraq invaded Kuwait on August 2, 1990, and the U.S. Government imposed economic sanctions against Iraq.

The sanctions blocked funds in Rafidain Bank's U.S. bank accounts that would have been paid to our company. As far as we can determine, the only reason that we have not been paid is because our own Government will not allow us to collect our money.

We realized that the sanctions might affect our ability to be paid. So before the due date on our first letter of credit, we contacted the State Department and the Treasury Department for assistance.

We ultimately dealt with officials at Treasury's Office of Foreign Assets Control, since they administer sanctions. They told us to apply for a license, which we did on September 10, 1990.

We went back and forth with OFAC by telephone for several months, until finally, on April 18, 1991, fully 7 months later, OFAC's Director Newcomb, wrote us a letter denying our application.

We subsequently learned that on the date of our license application, OFAC's General License No. 7 was in effect. We were not aware of General License No. 7 at the time, and no one at OFAC ever called it to our attention.

I think the chronology of events is very important. I have submitted for you a copy of OFAC's General License No. 7, dated August 15, 1990, and I have highlighted in yellow the relevant passage.

If you have that before you, you will notice that General License 7 provides that "specific licenses may be issued to permit payment

from a blocked account to a U.S. person for goods or services exported prior to the effective date to Iraq."

General License No. 7 clearly authorized OFAC to permit U.S. exporters to be paid out of blocked Iraqi accounts. We feel we are entitled to a license under this rule.

On October 18, 1990, while our September 10 license application was pending at OFAC, Treasury amended General License No. 7 to permit payment from blocked Iraqi accounts only to U.S. banks.

The language of amended General License No. 7 was subsequently promulgated in the Iraqi sanctions regulations, which were issued on January 18, 1991.

Again, I have also submitted a copy for the record and your review of OFAC's amended General License No. 7. And again for your convenience, I have highlight the original language in yellow and the newly inserted language in blue. The change is very clear.

The amended license allowed specific licenses to be issued to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank or a letter of credit reimbursement confirmed by a U.S. bank.

And I might note at this point, U.S. banks take on those obligations knowingly, willingly, and for a substantial fee.

I would also like to submit for the record and your review a copy of our September 10, 1990, application for a specific license.

And finally, I would like to submit for your review a copy of Mr. Newcomb's April 18, 1991, response to our September 10 application.

You will note I have highlighted Mr. Newcomb's response, where he informs us that he is permitted to issue licenses only involving transactions based on an irrevocable letter of credit issued or confirmed by a U.S. bank. And then he goes on to say that our transaction did not qualify.

[The information referred to may be found in the appendix.]

Mr. PARRISH. While our application was pending, Treasury changed its rules and then cited the new rule as a basis for denying our application. We believe Treasury should apply the rule that was in effect when we first sought a license.

We asked our Government for help, and it misled us. In fact, we have been penalized. As you have heard this morning, the Government contends that we are trying to get in line ahead of other claimants.

Nothing could be further from the truth. We are simply trying to collect money that clearly belongs to us and belonged to us before Iraq's invasion of Kuwait.

Why is the U.S. Government not willing to help our company and others in the same situation collect the money which we are owed by Iraq?

Whenever economic sanctions are imposed, the U.S. Government should allow trade which is in progress to be completed to the extent of protecting U.S. interests where resources and a mechanism exist to do so.

And this includes allowing U.S. exporters to be paid out of blocked accounts for goods shipped before sanctions were imposed, especially if letters of credit exist as a mechanism for payment.

And this was apparently the original intent of General License No. 7, dated August 15, 1990.

In the interest of your valuable time, I will summarize the rest of my testimony.

No. 1: Issuing specific licenses to permit U.S. exporters to be paid out of blocked Iraqi accounts for goods shipped to Iraq before August 2, 1990, will in no way undermine or contradict the objectives of the Iraqi sanctions.

Indeed, permitting U.S. companies to be made financially whole will reverse an injustice that has been perpetrated on U.S. exporters since Iraq invaded Kuwait, largely through the policy of our own Government.

As an example, when the United States imposed sanctions against Iraq, there were a number of tankers on the high seas filled with Iraqi oil destined for U.S. ports. Treasury did not freeze the oil.

Rather, Treasury issued a general license that allowed the U.S. purchasers of the Iraqi oil to take delivery and then pay for the oil by depositing payment in a blocked account in the United States Thus, U.S. interests were protected, and the objective of economic sanctions was upheld by denying Iraq any benefit.

As another example, under its authority to grant exceptions to the assets freeze, Treasury issued specific licenses authorizing debits to blocked Iraqi accounts for a variety of purposes. Treasury has issued specific licenses authorizing the release of $76 million to U.S. banks.

The money was released to satisfy Iraqi obligations to reimburse U.S. banks for payments the U.S. banks made out of their own funds pursuant to the letters of credit involving goods shipped to Iraq.

Again, transactions in progress when sanctions were imposed were permitted to be completed for the benefit of U.S. parties without benefiting Iraq.

Mr. Chairman, our situation is analogous to both examples. We shipped goods to Iraq before August 2, 1990, based on letters of credit issued by Iraqi banks. The Iraqi banks have funds blocked in the United States that were deposited here to facilitate commerce between the United States and Iraq.

The funds constitute the resource, and the letter of credit the mechanism by which Treasury could permit debits to blocked accounts to complete these transactions for the benefit of U.S. exporters, and Iraq would receive no benefit.

No. 2: There are ample Iraqi funds blocked in the United States to pay the pre-invasion claims of U.S. businesses and U.S. banks.

No. 3: The Gulf war allies of the United States have permitted their exporters to be paid out of blocked Iraqi accounts for goods shipped to Iraq before Iraq's invasion of Kuwait. The United States should do likewise.

No. 4: The Treasury has discriminated in favor of U.S. banks and against U.S. exporters.

No. 5: Under the Uniform Customs and Practices for Documentary Credits, which governs most letter of credit transactions, including ours, a confirming bank has the same right to reimburse-

ment from the reimbursing bank as a letter of credit beneficiary or exporter as to payment.

This means the Iraqi issuing bank's obligation to pay a letter of credit beneficiary is exactly the same as its obligation to reimburse a confirming bank.

No. 6: We sought to minimize our commercial risks by relying on letters of credit. When Iraqi assets were frozen, however, the commercial risks took a back seat to political risks.

The banks won a special concession from the Treasury worth at least $76 million. U.S. exporters, on the other hand, have been denied equitable treatment.

No. 7: Treasury has allowed U.S. banks to get paid out of frozen Iraqi assets if they earmarked specific funds as collateral to pay certain letters of credit.

But their regulations do not say anything about earmarking funds or collateral or specific letters of credit. Such a policy, if it in fact guides Treasury, is completely arbitrary and not based on letter of credit principles or practice.

No provision of the UCP states that a confirming bank may improve its prospects for reimbursement from an issuing bank by somehow earmarking funds.

From a practical or perhaps internal standpoint, this might be worthwhile for banks, but it provides no legal basis for Treasury to discriminate against exporters in favor of banks in dealing with assets frozen pursuant to IEEPA.

One might argue that Treasury's decision to release frozen Iraqi funds to U.S. banks is flawed. Perhaps the better argument is that Treasury properly recognized that allowing payment for goods shipped to Iraq before Iraq invaded Kuwait is good for U.S. interests and does not help Iraq. Why then will Treasury not treat U.S. exporters in the same way?

Treasury should adopt a policy that favors U.S. interests, regardless of whether the party involved is a U.S. bank or a U.S. exporter. The U.S. Government should do everything possible to ensure that U.S. exporters are made whole out of frozen Iraqi assets.

Treasury could and should immediately issue specific licenses that will release frozen Iraqi funds to pay U.S. letter of credit beneficiaries for goods they exported to Iraq before August 2, 1990. If this policy cannot be implemented administratively, then we ask Congress to implement it legislatively.

Mr. Chairman, all we are asking is to be treated fairly. What is good for U.S. banks, we think, is good for U.S. exporters.

This completes my testimony.

Senator SARBANES. Well, thank you very much, sir. That was a helpful statement.

[The prepared statement of Mr. Parrish follows:]

PREPARED STATEMENT OF MR. PARRISH

Mr. Chairman, I appreciate this opportunity to testify before your subcommittee this morning. My name is Tom Parrish. I am Vice President of Monk-Austin International, Inc. Monk-Austin is headquartered in Farmville, North Carolina. We source tobacco from many countries, process it, and sell it to manufacturing customers around the globe.

I'm here today to tell you about a problem we have that has cost us a good deal of money. The problem is directly related to the way the U.S. government has applied economic sanctions against Iraq. I understand there may be a handful of U.S.

companies with the same problem. We are seeking an administrative remedy, but if the executive branch cannot be persuaded to help, we ask that Congress enact remedial legislation.

Since Monk-Austin buys and sells tobacco all over the world, we rely heavily on letters of credit to finance our transactions. Our people are experts in utilizing letters of credit because that is usually how we get paid. I must say that in all our years I don't believe we have ever had a problem like the one I am about to describe.

Iraq is one of our long-time customers. We have been selling tobacco to Iraq's State Enterprise for Tobacco and Cigarettes ("SETC"), a government agency, for many years. We have sold millions of dollars worth of tobacco to SETC, and we have never had a problem getting paid. Not until three years ago, that is.

In 1989 and 1990 we sent three shipments of tobacco to Iraq. Payment was to be made pursuant to letters of credit issued by Rafidain Bank of Baghdad. We understood that Rafidain Bank had funds on deposit in various U.S. banks to facilitate commerce between Iraq and the U.S., and that we would be paid from those funds. We did not think we were taking a commercial risk. Again, SETC had paid us for every shipment we had ever sent them. In all respects, then, these were routine transactions utilizing routine payment mechanisms. We shipped the goods, and we presented the required documents through authorized banking channels.

The problem is we have not been paid.

Before we were to be paid, Iraq invaded Kuwait, and on August 2, 1990 the United States government imposed economic sanctions against Iraq. The sanctions froze, or blocked, funds in Rafidain Bank's U.S. bank accounts that would have been paid to Monk-Austin. As far as we can determine, the only reason we have not been paid is because our own government will not allow us to collect our money.

We realized that the sanctions might affect our ability to be paid, so before the due date on our first letter of credit, we contacted the State Department and the Treasury Department for assistance. We ultimately dealt with officials at Treasury's Office of Foreign Assets Control ("OFAC"), since they administer sanctions. They told us to apply for a license, which we did on September 10, 1990. We went back and forth with OFAC by telephone for several months, until finally, on April 18, 1991, Richard Newcomb, OFAC's Director, wrote us a letter denying our application. Mr. Newcomb said the financing terms of our transaction did not qualify for a specific license under Treasury's Iraqi Sanctions Regulations.

We subsequently learned that on the date of our license application, OFAC's General License #7 was in effect. We were not aware of General License #7 at the time, however, and no one at OFAC called it to our attention. General License #7 provides that "[S]pecific licenses may be issued * * * to permit payment, from a blocked account * * * to * * * a U.S. person for goods or services exported * * * prior to the effective date * * * to Iraq. * * *"[1]

General License #7 clearly authorized OFAC to issue specific licenses to permit U.S. exporters that shipped goods to Iraq before August 2, 1990 to be paid out of blocked Iraqi accounts. We feel we are entitled to a license under this rule.

On October 18, 1990, while our license application was pending at OFAC, Treasury amended General License #7 to permit payment from blocked Iraqi accounts only to U.S. banks that had issued or confirmed letters of credit for goods shipped to Iraq before August 2, 1990. Amended General License #7 was subsequently promulgated in the Iraqi Sanctions Regulations at 31 C.F.R. § 575.510.[2]

While our application was pending Treasury changed its rules, and then cited the new rule as the basis for denying our application. We believe Treasury should apply the rule in effect when we first sought a license.

We asked our government for help, and it mislead us. Now the government is trying to convince people that we are trying to get in line ahead of other U.S. claimants. Nothing could be further from the truth. We are simply trying to collect money that clearly belongs to us, and belonged to us before Iraq's invasion of Kuwait.

I can't understand why the U.S. government isn't willing to help our company and others in the same position collect the money we are owed by Iraq. Treasury should

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[1] "Specific licenses may be issued on a case-by-case basis to permit payment, from a blocked account or otherwise, of amounts owed to or for the benefit of a U.S. person for goods or services exported by a U.S. person or from the United States prior to the effective date directly or indirectly to Iraq. * * *" [General License #7, August 15, 1990]

[2] "Specific licenses may be issued on a case-by-case basis to permit payment *involving an irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank*, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods or services exported prior to the effective date directly or indirectly to Iraq.* * *" (emphasis added). [Amended General License #7, October 18, 1990; and 31 C.F.R. § 575.510, January 18, 1991]

seek to protect U.S. commercial interests that have trade in progress with a target country when economic sanctions are imposed under authority of the International Emergency Economic Powers Act ("IEEPA"). Whenever economic sanctions are imposed under IEEPA, the U.S. government should allow trade in progress to be completed to the extent of protecting U.S. interests where resources and a mechanism exist to do so. This includes allowing U.S. exporters to be paid out of blocked accounts for goods shipped before sanctions were imposed, especially if letters of credit exist as the mechanism for payment.

This was apparently the original intent of General License #7.

Permitting U.S. exporters to collect money Iraqi banks owe them would not contradict the objectives of the Iraqi sanctions. In his "Message to Congress on the Declaration of a National Emergency with Respect to Iraq" (August 3, 1990), President Bush stated the reasons for blocking Iraqi assets:

> The measures we are taking to block Iraqi assets will have the effect of expressing our outrage at Iraq's actions, and *will prevent that government from drawing on monies and properties within U.S. control to support its campaign of military aggression against a neighboring state.* (emphasis added).

Issuing specific licenses to permit U.S. exporters to be paid out of blocked Iraqi accounts for goods shipped to Iraq before August 2, 1990 would in no way undermine or contradict the objectives of the Iraqi sanctions. Indeed, permitting U.S. companies to be made financially whole will reverse an injustice that has been perpetrated on U.S. exporters since Iraq invaded Kuwait, largely through the policy of our own government.

When the U.S. imposed sanctions against Iraq, there were a number of tankers on the high seas filled with Iraqi oil destined for U.S. ports. Treasury did not freeze the oil. Rather, Treasury issued a general license that allowed the U.S. purchasers of the Iraqi oil to take delivery, and then pay for the oil by depositing payment in a blocked account in the U.S. Thus, U.S. interests were protected, and the objective of economic sanctions was upheld by denying Iraq any benefit.

Under its authority to grant exceptions to the assets freeze, Treasury has issued specific licenses authorizing debits to blocked Iraqi accounts for various purposes. According to a report submitted by the President to the Senate Foreign Relations Committee and the House Foreign Affairs Committee pursuant to §511 of Public Law 103–236, Treasury has issued 74 specific licenses authorizing the release of $89,575,148.36 from blocked Iraqi accounts. Of this sum, $76,193,387.28 was released to U.S. banks to satisfy obligations of Iraqi banks or the Iraqi government to reimburse the U.S. banks for payments the U.S. banks made out of their own funds pursuant to letters of credit involving goods shipped to Iraq before August 2, 1990. Again, transactions in progress when sanctions were imposed were permitted to be completed for the benefit of the U.S. parties, without benefiting Iraq.

Our situation is analogous to the two examples: we shipped goods to Iraq before August 2, 1990 based on letters of credit issued by Iraqi banks. The Iraqi banks have funds blocked in the U.S. that were deposited here to facilitate commerce between the U.S. and Iraq. The funds constitute the resource, and the letters of credit the mechanism, by which Treasury could permit debits to blocked accounts to complete these transactions for the benefit of the U.S. parties. Iraq would derive no benefit.

There are ample Iraqi funds blocked in the U.S. to pay the pre-invasion claims of U.S. businesses and U.S. banks. According to Treasury, $1.2 billion worth of Iraqi assets are frozen in the U.S. Pre-invasion claims of U.S. businesses total $829 million, while pre-invasion claims of U.S. banks total $114.5 million. As noted earlier, Treasury has authorized U.S. banks to recover at least $76 million of their claims out of blocked Iraqi accounts.

The Gulf War allies of the U.S. have permitted their exporters to be paid out of blocked Iraqi accounts for goods shipped to Iraq before Iraq's invasion of Kuwait. For example, the Bank of England, which enforces Great Britain's Iraq sanctions regime, has permitted British exporters to debit Iraqi accounts blocked in British banks to pay exporters for goods shipped to Iraq in cases where the Iraqi party instructs the U.K. bank holding the blocked funds to release funds to pay for the goods, and if the U.K. beneficiary attests that no payments will be made to Iraqi entities. This is clearly the more enlightened policy.

In administering its Iraqi sanctions regime, Treasury has discriminated in favor of U.S. banks and against U.S. exporters. Treasury has approved the release of frozen Iraqi assets to pay Iraqi banks' obligations to U.S. banks, but has refused to authorize the release of frozen Iraqi assets to pay Iraqi banks' obligations to U.S. exporters. In both instances, the Iraqi banks' obligations are based on letters of credit issued by the Iraqi banks for the benefit of U.S. exporters in cases where the U.S. exporters shipped goods to Iraq before August 2, 1990.

Treasury has justified its policy by citing differences between "confirmed" and "advised" letters of credit. Treasury argues that U.S. banks that confirmed letters of credit issued by Iraqi banks have an obligation to pay the beneficiary. U.S. banks that "merely advised" letters of credit issued by Iraqi banks have no such obligation. While this is true, and may explain why some U.S banks paid exporters out of their own funds, it doesn't explain why those U.S. banks were authorized by Treasury to be reimbursed out of frozen Iraqi assets, but U.S. exporters were not authorized to be paid.

Under the Uniform Customs and Practices for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400, "UCP"), which governs most letter of credit transactions, including ours, a confirming bank has the same right to reimbursement from the issuing bank as the letter of credit beneficiary (i.e. the exporter) does to payment.

Article 10(a) of the UCP provides that "[A]n irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the stipulated documents are presented, and that the terms of the credit are complied with * * *" to pay the beneficiary. This means that an Iraqi bank that issued a letter of credit for the benefit of a U.S. exporter has an unconditional obligation to pay the U.S. exporter if the U.S. exporter satisfies the terms of the letter of credit and presents the stipulated documents.

Article 11(d) of the UCP provides that "[B]y * * * authorizing or requesting a bank to add its confirmation, the issuing bank authorizes such bank to pay, accept, or negotiate, as the case may be, against documents which appear on their face to be in accordance with the terms and conditions of the credit, and undertakes to reimburse such bank in accordance with the provisions of these articles." Article 16(a) says that "If a bank so authorized effects payment * * * against documents which appear on their face to be in accordance with the terms and conditions of a credit, the party giving such authority (i.e., the issuing bank) shall be bound to reimburse the bank which has effected payment. * * *" This means that if an Iraqi issuing bank authorized a U.S. bank to confirm a letter of credit, and if the U.S. bank did so and then paid a letter of credit based on presentation of conforming documents, the Iraqi bank has an unconditional obligation to reimburse the U.S. bank.

The confirming bank's right to reimbursement from the issuing bank is the same as the letter-of-credit beneficiary's right to payment.

Treasury has argued that U.S. exporters want to force U.S. advising banks to pay the U.S. exporters out of their own funds. This is simply wrong. We seek only what we are entitled to under Article 10(a) of the UCP. We asked Treasury to authorize the release of frozen Iraqi funds to pay our letters of credit relating to goods we legally shipped to Iraq before August 2, 1990. This would equate with the treatment accorded U.S. banks. Treasury has responded that it won't authorize release of frozen Iraqi funds absent an undertaking by a U.S. bank to pay.

Treasury obviously doesn't understand that the U.S. confirming banks have an obligation to pay out of their own funds. They have no unique right to tap frozen Iraqi assets for reimbursement. The legal principle that justifies releasing frozen Iraqi assets to U.S. confirming banks is no more compelling than the legal principle that justifies releasing frozen Iraqi assets to U.S. exporters. The Iraqi issuing bank's obligation to pay a letter of credit beneficiary is the same as its obligation to reimburse a confirming bank.

We sought to minimize our commercial risks by relying on letters of credit. When Iraqi assets were frozen, however, the commercial risks took a back seat to political risks. The banks won a special concession from Treasury worth at least $76 million. U.S. exporters, on the other hand, were denied equitable treatment.

Treasury has cited a "policy"—unwritten and not reflected in its regulations—that it would issue specific licenses allowing expenditures from blocked accounts for reimbursement of U.S. banks from collateral they held specifically for that purpose, after the banks paid exporters under commercial letters of credit issued or confirmed by U.S. banks for shipments made prior to sanctions, if the collateral was earmarked for specific letters of credit before August 2, 1990. On its face Treasury's regulation simply authorizes Treasury to issue specific licenses to permit payment involving letters of credit issued or confirmed by U.S. banks involving goods shipped to Iraq before August 2, 1990. The additional hidden condition is highly technical and arbitrary. It appears Treasury has incorporated a banking practice as a condition for obtaining a specific license. None of the exporters had the ability to "collateralize" Iraq's obligations to them by "earmarking" certain funds to pay their letters of credit. This option was only available to banks. This reinforces the view that Treasury arranged a sweetheart deal for U.S. banks that gave them special access to blocked Iraqi funds to the tune of $76 million.

Such a policy, if it in fact guides Treasury, is completely arbitrary and is not based on letter of credit principles. No provision of the UCP states that a confirming bank may improve its prospects for reimbursement from an issuing bank by somehow "earmarking" funds. While from a practical standpoint this may be worthwhile for banks, it provides no legal basis for Treasury to discriminate against exporters in favor of banks in dealing with assets frozen pursuant to IEEPA.

One might argue that Treasury's decision to release frozen Iraqi funds to U.S. banks is flawed. The better argument is that Treasury properly recognized that allowing payment for goods shipped to Iraq before Iraq invaded Kuwait is good for U.S. interests and doesn't help Iraq. Why, then, won't Treasury treat U.S. exporters the same way?

Treasury should adopt a policy that favors U.S. interests, regardless of whether the party involved is a bank or an exporter. The U.S. government should do everything possible to insure that U.S. exporters are made whole out of frozen assets.

Treasury could, and should, immediately issue specific licenses that would release frozen Iraqi assets to pay U.S. letter-of-credit beneficiaries for goods they exported goods to Iraq before August 2, 1990. If this policy cannot be implemented administratively, then we ask Congress to implement it legislatively.

Senator SARBANES. I have just a few questions I would like to put, first to you, Mr. Parrish.

On page 4, toward the end of the page, you say: "This includes allowing U.S. exporters to be paid out of blocked accounts for goods shipped before the sanctions were imposed, especially if letters of credit exist as the mechanism for payment."

Now, the assertion you make in that sentence is much broader than the letter of credit situation, am I correct?

Mr. PARRISH. I guess so, although that was not my intention. I am just indicating that certainly those transactions, which were structured under a letter of credit, should be accorded some protection.

Senator SARBANES. All right. So you are not arguing a broader case, I take it.

Mr. PARRISH. No, sir.

Senator SARBANES. Now, on page 6, you say: "There are ample Iraqi funds blocked in the U.S. to pay the pre-invasion claims of U.S. businesses and U.S. banks. According to Treasury, $1.2 billion worth of Iraqi assets are frozen in the U.S. Pre-invasion claims of U.S. businesses total $829 million, while pre-invasion claims of U.S. banks total $114.5 million."

And then you make the point about the authorization for the banks to recover $76 million.

Now, as one reads that, you say: "Well, $829 million and $114 million, that is not quite a billion. And there is $1.2 billion worth of Iraqi assets. Why do we not just go ahead and pay all of those?"

But what does that do to the veterans whose harm was after the invasion, but who are looking to this pot of $1.2 billion in order to recover?

Mr. PARRISH. Mr. Chairman, I have, in that section that you just cited, limited my observation to pre-invasion claims of U.S. businesses and U.S. banks.

Senator SARBANES. Yes. Now those would include the pre-invasion claims of U.S. businesses, and, I assume, include a number of claims that are not premised on a letter of credit.

Mr. PARRISH. It has been very difficult for us to get information, as I understand it has been difficult for you to receive information.

But based on the best information we could get, those are the figures that we have for the U.S. business and U.S. bank pre-invasion claims.

Senator SARBANES. Those are the figures we have, but we do not have a breakdown as to how many of them are geared to a letter of credit.

Mr. PARRISH. That is correct.

Senator SARBANES. At least I do not think we do. In any event, you are leaving out an evaluation that we have to make about the post-invasion claims, and particularly about the claims of veterans for the harm that they encountered. In fact, there was a strong statement that Mr. Violante had in his testimony here on that very point.

I guess my question to you is do we not have some competing equities here?

Mr. PARRISH. We do.

Senator SARBANES. Would you concede that at least the post-invasion claims of the veterans ought not to be given second status to the pre-invasion claims of U.S. businesses and U.S. banks?

Mr. PARRISH. From what I have heard this morning, Mr. Chairman, if the U.S. Government claims were put at the bottom of the priority list, perhaps there would be enough money to go around for business claims and veterans claims.

It is very difficult to quantify the veterans claims. I can very accurately quantify my company's claim, and I think most other businesses could very easily and quickly document the amount of their business claims.

But it would seem that there would be, if not enough money to pay everyone 100 cents on the dollar, that there could be a payment much greater than if the United States continues to have access to this fund.

Senator SARBANES. Well, that was a line of questioning I explored this morning. Your company has been impacted very directly in a very heavy fashion.

Mr. PARRISH. Yes, sir.

Senator SARBANES. The U.S. Government and the taxpayers have been impacted by, say, the default of the payment of a Commodity Credit loan, but that is an impact that is dispersed. It is a small impact on a large population. You have a large impact on a single population, so to speak.

I do not know the financial situation of your company, but I assume it has had a substantial impact. And in any event, whether it has or has not, it is reasonable to raise the question of why the burden should fall so heavily upon you, as we try to sort this thing out.

Some burden may fall on you in any event, because I do not think there are going to be enough assets to give 100 percent to equity claimants, even if we start sorting out some of the priorities, and even if we put the Government in a somewhat secondary position.

I am just trying to get at some of your rationale, because I do not want to accept a prioritization that then would create a problem for the veterans. In fact, the legislation currently has a priority claim for veterans, at least a limited one.

Mr. PARRISH. Mr. Chairman, I am not commenting on the legitimacy or the fairness of claims of others. I am trying just to direct my comments at the situation that our company encountered.

We made a diligent effort to find out what the rules were. Once we were able to do that, we made application. Our application was denied, not based on the rules in existence at the time but 7 months later. We consider that to be an arbitrary determination. We do not think that is fair.

Senator SARBANES. Now, Mr. Block, let me ask you a question. Do you see a distinction in the letters of credit that were given a license, and therefore could be honored, and the letter of credit that Mr. Parrish has brought to our attention here?

Mr. BLOCK. Absolutely. I think they are two very different risks that one company took and that Mr. Parrish's company took.

Senator SARBANES. What do you see those as being?

Mr. BLOCK. When a company like Mr. Parrish's is issued a letter of credit, it is issued in this case by an Iraqi bank. That is an Iraqi risk. He is going to be paid money by an Iraqi entity. I suppose it was Rafidain Bank in this case.

If a company feels uncomfortable with that risk, we do have a mechanism in the payment system to convert that risk, Iraqi risk to U.S. bank risk. And you can do that by having the letter of credit confirmed by a U.S. bank.

If you have the letter confirmed by a U.S. bank, you pay a significant premium. But by paying that premium, you change the risk from the Iraqi bank to the U.S. bank that confirmed the letter of credit.

Those are the exporters who were paid. The U.S. confirming banks segregate those funds, for eventual reimbursement to themselves.

I think it is a critical public policy issue to preserve the longstanding practice which allows U.S. exporters to use U.S. banks to ship into countries that have high political or economic risk. This is the established way.

In all past blocking orders, similar rules have operated. If we have confirmed and if we have segregated the funds, we have been permitted to reimburse ourselves. If this structure were not in place, we would be unwilling to confirm a letter of credit.

Therefore it would significantly diminish U.S. export opportunities into the developing world, into any country that has high political or economic risk. I think that would be unfortunate.

In this particular case, the other thing which banks can do for a very nominal——

Senator SARBANES. The unfortunate policy would be if the letters of credit issued by the U.S. banks were not honored, right?

Mr. BLOCK. If we cannot repay ourselves——

Senator SARBANES. Right.

Mr. BLOCK [continuing]. In a clear, predictable manner——

Senator SARBANES. Now, suppose we say that we understand the impact on trade by not permitting the banks to repay themselves, and therefore it will be permitted.

What is the problem with honoring the other kind of letter of credit? Is it that then you will have people not protecting themselves sufficiently in insecure situations?

Mr. BLOCK. As Senator Robb said, these letter of credit holders were only an electronic blip away from being paid, which has some merit to it.

But it was those electronic blips that were stopped. So we may well have had millions and millions of dollars that should have been flowing into the issuing banks account. My bank was not a party to this, so I just use this hypothetically when I say my bank. We could have had a great deal of money coming into our bank, and that was stopped.

Under normal circumstances in the payment system, the balls are constantly being passed—chips are usually going around the table. But in this particular case, with the blocking order, all payments stopped.

And so what is happening, if we would pay an advised letter of credit, we would be putting out money under normal circumstances absent a blocking order. We would also be receiving money.

So if we pay under this scenario, the bank that advises is paying out, but nothing is coming in. And that, the bank did not plan on when it advised a letter of credit.

With an advised letter of credit, you would expect that it would be a normal, routine day, but money would be going out, and money would be coming in. And that is the fundamental reason that banks do not want to pay an advised LC under a blocking order.

The other problem is that if I am a businessman, and I see that this legislation passes, why in the future would I pay substantially more to have a letter of credit confirmed, when Congress has intervened retroactively and given an advised letter of credit holder the exact same benefit that somebody got by paying the premium to confirm? And therefore, banks will have to reprice the whole product.

For advising a letter of credit, we charge between $75 and $150. Confirming a letter of credit, we charge a percent of the face value of the credit.

So it is a substantially different product, and you pay a premium for it. And the exporters that paid that premium are whole today. The exporters who did not pay that premium by and large are not whole, as are the people who paid by open account.

If I am holding a check drawn on Rafidain, I am just as out as if I hold a letter of credit. The risk is basically the same.

Senator SARBANES. Mr. Parrish, I assume you will want to make some comments about that.

Mr. PARRISH. Yes, Mr. Chairman, I would.

I think we are focusing on the wrong end of the transaction. If we focus on the obligation of the issuing bank, which in this case was in Iraq, the issuing bank had an absolute obligation to pay either the beneficiary through the advised letter of credit or the reimbursing or the confirming bank.

That obligation is the same regardless of whether a U.S. bank has chosen to interject itself into the transaction for a fee.

It appears that what Treasury has done is focused on the role of the U.S. bank in the letter of credit transaction. Letter of credit transactions can proceed with or without a confirmation. It is whatever the beneficiary desires.

When U.S. banks interject themselves into the transaction by offering to sell and selling a confirmation, yes, they are taking on an obligation to pay.

But we do not see that there is any difference between the dollars that those U.S. banks would be out today and the dollars that we are out today, except the U.S. banks were able to go to OFAC and get licenses so that they could recoup their dollars that they paid out in confirmed letters of credit. Plus, of course, they were able to keep their profitable confirmation fees.

Four years later, we are out all of our dollars. That, Mr. Chairman, I think is the difference.

Senator SARBANES. Well, of course, the exporter who relied on the letter of credit with a U.S. bank got paid, correct?

Mr. PARRISH. Yes, sir.

Senator SARBANES. And then the bank was reimbursed from the assets, I take it, on the theory that unless you permit this, you no longer are going to have a procedure whereby exporters can protect themselves against country risk.

Now you relied upon an Iraqi bank letter of credit, and I am curious as to why you did that.

Mr. PARRISH. Mr. Chairman, according to my testimony, we had been dealing with, in fact we had been encouraged to deal with, the Iraqi Government for a number of years prior to the Iraqi invasion of Kuwait. During all of those——

Senator SARBANES. You were encouraged by whom?

Mr. PARRISH. The U.S. Government. I think that that is a fair statement. During all of those years that we sold tobacco to Iraq, quite frankly, they were an excellent customer. They always paid on time.

We chose to run the transactions through a letter of credit just to have things neatly organized, but we never had any problems with our Iraqi customer concerning payment.

Senator SARBANES. If you had not used a letter of credit and simply sold to Iraq on an open account, had been paid, so you never had had a problem, and had "been encouraged by the Government" to engage in this trade, and this situation arose in which we find ourselves here, would you take the position that you ought to have priority access to the funds?

Mr. PARRISH. No, sir, I would not, because in a letter of credit transaction, the banks are a part of the transaction and the funds.

And the whole reason you use a letter of credit is so that when the buyer of the goods receives the goods and the title documents, then the seller is entitled to the proceeds, and you have the banks serving as that intermediary.

If we had chosen to sell under open account, as we do with many of our customers, that would have been a simple case where the Iraqis would have our tobacco, the title documents, our invoice, and their money all on that side.

But with the letter of credit transaction, by including the banks, we know the money is here. We know the money is in the United States to facilitate this trade.

Senator SARBANES. How do you know it is in the United States?

Mr. PARRISH. I would like to tell you with a great deal of certainty that there is a specific account with our name on it. But we

have not been able to get that kind of information from OFAC or the banks. But I am pretty sure that the money is in the United States in one of these blocked accounts.

Senator SARBANES. And where would it be located in the United States?

Mr. PARRISH. The letters of credit are all different and have to be read individually. But they will normally instruct the advising bank or the confirming bank that at such time as payment is due, to debit the Iraqi bank's account located at a U.S. bank.

Senator SARBANES. Now, is there a particular U.S. bank in which these funds of the Iraqi bank have been placed to honor these letters of credit in the dealings that you have had?

Mr. PARRISH. In our case, we had three different transactions, three different letters of credit, involving two different banks.

And each one of those banks, of course, has their own internal banking connection and relationship with various other banks in the United States and then ultimately with the issuing Iraqi bank.

Senator SARBANES. Two different U.S. banks.

Mr. PARRISH. Yes, sir.

Senator SARBANES. This is on the three letters of credit that are at issue here.

Mr. PARRISH. Yes, sir.

Senator SARBANES. I take it you have been doing business in this fashion for quite a period of time, is that correct?

Mr. PARRISH. Yes, sir.

Senator SARBANES. And with the earlier letters of credit, did they also work through these same two banks, as a general proposition?

Mr. PARRISH. No. I believe that there were probably other banks involved. It might have been the same banks. I just do not have a recollection.

Senator SARBANES. In fact, the determination is made by the Iraqi bank. The determination as to which U.S. bank these funds will come through to you is made by the Iraqi bank, or do you have some say in that determination?

Mr. PARRISH. Yes, sir. Usually the only say that we have in setting up a transaction is we will indicate to our Iraqi customer that we would like the letter of credit to be advised or paid through a bank of our choosing on this side, so that we can deal with a bank with which we are familiar.

In our case, I would very much like to know the different banking relationships between the advising bank and the paying bank and the reimbursing bank and the correspondent bank and, ultimately, back to the issuing Iraqi bank.

But we are not privy to any of that kind of information. We are just on the end of the transaction over here.

Senator SARBANES. Now, Mr. Block, what percent of business is done in the two different ways? Do you have any idea?

Mr. BLOCK. It would vary from country to country. In countries where there is no political risk you would have very few confirmed letters of credit.

Senator SARBANES. You would have what?

Mr. BLOCK. You would have very few confirmed letters of credit, or it depends on the sophistication of the exporter. An unsophisti-

cated exporter might want the comfort of a confirmed letter of credit.

The one point I think is important is that we should not blur together advised or confirmed letters of credit. There is an absolute distinction between the two and the way the banking system treats them.

If my bank confirms a letter of credit, I know I have an absolute obligation to pay upon presentation of the appropriate documents. Therefore, I will segregate the funds. I will get permission from the issuing bank, and I will segregate those funds.

And I think another important point concerning OFAC, is that if I request a license, I must document that I segregated the funds. If I did not take that action, OFAC will not give me a license.

There are banks that did confirm, that have not been given a license to reimburse themselves because they did not take that action of segregating their funds.

On the other hand, when we advise, we do not know when it is going to be paid. We are merely acting as agent. And there are no specific funds set aside for that payment because it is not our obligation to make that payment.

So we will work with the foreign bank, the issuing bank, at the time the documents are presented and work with them and ask them: "Do you want us to pay out of the funds we have now? Do you want to send in new funds? Are you sending in new funds?"

They are our customer, that other bank, and we will pay as they instruct us to.

But obviously, we did not get any instructions here because of the blocking order. If the Iraqi bank had wanted—the U.S. Government would be glad to let the Iraqi bank send in more money.

If the Iraqi bank had sent in more money, we would be glad to pay. I am sure they would get a license for those conditions. But, of course, the Iraqi Government does not want to send in money under a blocking order.

Mr. PARRISH. Mr. Chairman, may I respond to that?

Senator SARBANES. Certainly. Certainly.

Mr. PARRISH. All of this conversation we have heard this morning about earmarking, collateralizing, segregating, I do not see that in the regulations.

It seems to me that if that is the policy of Treasury, which apparently it is, they have put in place a requirement that is not mentioned in the regulations. Therefore, we are unable to read and to understand why it was put there. And it also places before us, then, an insurmountable hurdle.

I would very much like to know if there is money in this country in a U.S. bank account with our name on it. But we have not be able to obtain that information from the banks, nor from OFAC.

So, the requirement to establish collateralization to the satisfaction of OFAC in order to obtain a license puts in front of us a burden or a hurdle that we cannot get over.

Mr. BLOCK. May I add one additional point, that might help explain the bank's problem? The bank—let us say the bank that advised Mr. Parrish's LC, could have advised letters of credit far in excess of the amount they had in their bank on the date of the freeze order.

The reason the Treasury and the bank do not want the OFAC to issue the order in favor of the advised LC holder is this: what happens if not only Mr. Parrish's company but five other companies present the advised letters of credit, and the bank does not have the money to pay?

Because the whole banking system is stopped by the blocking order, you have no idea whether or not you have enough funds in the bank that day to pay all the obligations that are technically drawn on you.

And that is why the only fair thing to do it is to have a central arbitration with the pro rata of some sort of settlement mechanism.

Senator SARBANES. There have been previous blocking orders, obviously.

Mr. BLOCK. Absolutely.

Senator SARBANES. Is there a standard practice on this question?

Mr. BLOCK. The standard practice, with the exception of Iran, is that advised letter of credit holders are not paid. It has been brought up by others that they were all paid in Iran, which is absolutely true.

Senator SARBANES. It is true or is not true?

Mr. BLOCK. It is true, because there were many more assets here than there were claims. So everybody was paid 100 cents on the dollars. But that is the exception.

In China, in the other cases that were settled, there was an unblocking, after the Second World War.

Senator SARBANES. So, in the Iran situation, the amount of assets was in excess of the claims.

Mr. BLOCK. That is correct.

Senator SARBANES. So everyone was paid 100 percent.

Mr. BLOCK. Everyone was paid, but that was the only time, to my knowledge, that advised letter of credit holders have been paid. They are an unsecured party. It is unfortunate.

A blocking order is inherently unfair, because somebody is holding the ball when the music stops. And those people are disadvantaged. Banks, to the extent that we have unsecured credit outstanding, are holding the ball as well.

And if we were sloppy that day, if that was the one day we paid out for LC, we did not have, I have seen it many times on bankruptcies and other things, we are in big trouble. So it is an inherently unfair process, because the music stops.

Senator SARBANES. Do you have a view on whether the Government should be placed at an equal level with the private sector when there are claims in excess of assets?

Mr. BLOCK. I would not want to—I am representing a trade association, and the trade association has never really——

Senator SARBANES. Thought through that position.

Mr. Violante, did you all testify on the House side?

Mr. VIOLANTE. No, we did not. We supplied Representative Hamilton a letter similar to the testimony we provided here.

Senator SARBANES. So you just want to be assured of certain things, I take it. You are not in opposition to the legislation.

Mr. VIOLANTE. That is correct. We are not in opposition.

Senator SARBANES. You are not in direct opposition.

Mr. VIOLANTE. We just want to make sure that veterans are not disadvantaged by this bill. And that was based on the language in the House report.

Senator SARBANES. Do you think veterans are being disadvantaged currently by failure to get a bill that establishes an orderly process?

Mr. VIOLANTE. Do you mean for this claims process?

Senator SARBANES. Yes.

Mr. VIOLANTE. Unfortunately, I believe they are. I mean, right now, we have been fighting with the VA on getting compensation for these Persian Gulf vets, many of whom the VA believes do not qualify for benefits. So the longer this is delayed, obviously these veterans have essentially no where to turn.

Senator SARBANES. Mr. Block, you seem to have had a lot of experience with this. What is the likelihood that we can get additional assets in order to meet more of these claims in the future?

Mr. BLOCK. Well, I think that is really a question for the State Department. Clearly, as we at some future point normalize relations with Iraq, our Government will have an interest, at some point, with some future government, to normalize relations.

That is really a government-to-government issue, which I would not discount completely. There probably is an ability to make some additional recovery, probably with a different government, however. That is just my own personal surmise.

Senator SARBANES. I would like to get a little better feel than I have for what the cost is to the exporter between an advised letter of credit and a confirmed letter of credit.

Mr. BLOCK. OK. For an advised letter of credit, it is usually, as I said, between $75 and $150, depending on the ongoing relationship between the customer——

Senator SARBANES. Do you mean just a flat fee?

Mr. BLOCK. Just a flat fee. For a confirmed letter of credit, we will usually charge around one-tenth of 1 percent of the face value of the——

Senator SARBANES. So on a $5 million transaction, what would that mean?

Mr. BLOCK. About $5,000 versus $75. Mr. Parrish is probably more intimately familiar, since his firm does them. But I think that is about the magnitude that we are talking about.

Senator SARBANES. Does your firm use confirmed letters of credit in some instances?

Mr. PARRISH. Yes, sir. In some instances, we do.

Senator SARBANES. You mean in dealings with some other countries or firms in other countries or something of that sort.

Mr. PARRISH. If it is a customer that we feel some discomfort about their ability or their willingness to pay, yes, we would have the letter of credit confirmed.

One of our letters of credit has a face value of $1.7 million.

And we did pay a fee. It was not a confirmation fee. It was a deferred payment undertaking fee. And, as I recall, the fee we paid was $13,000, which is a lot more than a tenth of a percent of the face value. I am not sure exactly what the percentage was. I think it was three-quarters of a percent.

Now, that was not called a confirmation fee. It was called a deferred payment undertaking fee.

On all of our letters of credit and those that I am familiar with, the Iraqis would require shipment of the goods. Then 1 year after the bill of lading date, they would pay. They drive a hard bargain. What they would end up with is a year's worth of the use of your money.

In our situation, we paid a hefty banking fee, for which apparently we have received nothing.

Senator SARBANES. All right. Is there anything anyone wishes to add? [No response.]

Well, gentlemen, thank you very much for your testimony. We appreciate it.

The committee will stand adjourned.

[Whereupon, at 1:30 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

SUMMARY OF LICENSES GRANTED TO DEBIT BLOCKED IRAQI ACCOUNT
(AS OF DECEMBER 1, 1994)

Category	Description	Category total
A	Category A—satisfaction of the conditions of 575,510 of the regulations or its precursor, GL 7, as amended.	$50,303,648,15
B	Category B—customary service charges related to maintaining accounts or blocked property.	974,489.11
C	Category C—continuation of limited Iraqi diplomatic activities.	84,200.00
D	Category D—compliance with Executive order 12817, in conformity with U.N. Security Council Resolution 778.	*
E	Category E—correction of bank errors	2,280,524.80
F	Category F—completion of sovereign debt payment due and payable and ordered pre-sanctions.	9,402,534.00
G	Category G—release to non-Iraqi parties of non-Iraqi funds erroneously blocked because the transfer referenced Iraq-related humanitarian aid, a project in Iraq, a third-country Embassy or national engaged in diplomatic activity in Iraq, or an entity mistaken for an Iraqi specially designated national or resident.	10,759,044.47
H	Category H—transfer from a U.S. company's pre-sanctions escrow account.	870,130.00
I	Category I—debits from accounts of U.S. individuals or entities determined to be specially designated nationals of Iraq for living expenses and preservation of blocked assets.	50,736.40
J	Category J—compliance with court order	6,422,418.10

*Up to $200 million from the proceeds of certain Iraqi oil shipments is subject to temporary transfer to the United Nations pursuant to Security Council Resolution 778 for use for disarmament, claims compensation, and humanitarian activities. The resolution provides for the return of these funds, with interest, to the accounts from which the funds were provided.

SENATOR HELMS LETTER TO SECRETARY BENTSEN

COMMITTEE ON FOREIGN RELATIONS,
WASHINGTON, DC,
August 29, 1994.

The HONORABLE LLOYD M. BENTSEN, Jr.,
U.S. Secretary of the Treasury, 701 Madison Place, Washington DC

DEAR LLOYD: The Foreign Relations Committee has scheduled a hearing in connection with the Iraqi Claims Act of 1993 (H.R. 3221). In anticipation of that hearing, on September 14, a number of Senators on the Committee have contacted me regarding the Iraqi claims issue. Obviously, there is substantial interest in the matter.

To prepare adequately for the hearing, I need your help in expediting responses to a number of my questions about Iraqi assets that were frozen at the beginning of the Gulf War, as well as details about the claims pending against them and the impact on the Administration's legislative request.

I enclose the questions, answers to which are essential to preparing for the September 14 hearing. I'll deeply appreciate your help in ensuring that I receive the responses on or before September 12, two working days prior to the scheduled date for the hearing. They should be delivered to our staff director, Admiral James "Bud" Nance, 452 Dirksen Senate Office Building.

Many, many thanks, Lloyd.

Sincerely,

JESSE HELMS.

Enclosure.

QUESTIONS

1. I am interested in obtaining information pertaining to any and all license applications Treasury has received and licenses Treasury has granted since August 2, 1990, that would authorize or result in a debit to frozen or blocked Iraqi funds. I am particularly interested in the following information for each claim:

A. Name and nationality of the licensee;
B. Date of application;
C. Date of issue;
D. Amount authorized to be released from a blocked Iraqi account;
E. Name of institution in which funds were held;
F. Iraqi party in whose name funds were held;
G. In cases involving letters of credit, please provide the following:
i. Name, address and nationality of the beneficiary of the letter of credit;
ii. Name of the Iraqi party for whom the letter of credit was opened;
iii. Name of the Iraqi buyer of the goods or services, if different from the party listed in ii;
iv. Description of the goods and services sold;
v. Name and nationalities of all the banks involved in the transaction (including the issuing, confirming, advising, paying and/or reimbursing bank, as appropriate);
vi. Evidence proving that the bank's letter of credit debt was secured;
H. Date funds were released and amount released; and
I. Treasury's justification for issuing the license.

2. Have you denied a license to any U.S bank that issued or confirmed a letter of credit for a contract on which goods or services were shipped to Iraq prior to August 2, 1990?

3. What is your best estimate for the total dollar amount of pre-invasion and post-invasion claims against Iraqi funds frozen in the United States? (Please give a specific dollar amount broken down by: U.S. servicemen, the U.S. government, U.S. banks, U.S. businesses and individuals. If you do not have the specific figures, please estimate the amount based on the dollar amount of claims for which licenses have already been filed, as well as the dollar amount of claims estimated to be filed if H.R. 3221 were passed into law.)

4. I understand that if H.R. 3221 were enacted as passed by the House of Representatives, all U.S. parties (government, businesses and individuals) would be compensated at a pro-rata rate far below their original debts. Please explain the policy behind the Administration's decision to compensate entities for less than one hundred (100) percent of their claim.

5. When did the U.S. government make the policy decision to agree to less than one hundred (100) percent reimbursement for U.S. government debts? Please provide a copy of the decision memorandum. Has this decision been reviewed?

6. Why did the Administration's proposed bill language allow the United States government to compete directly with United States businesses for compensation for its claims against the government of Iraq?

7. Which United States financial institutions currently hold frozen or blocked accounts of frozen Iraqi assets? Please provide the list of institutions, the name of the Iraqi entities whose funds are frozen by each institution and the amount of funds. Please identify the amount of funds, if any, for which each institution is seeking compensation from frozen Iraqi funds.

8. How does a U.S. bank secure a letter of credit it issues or confirms in order to become a "secured creditor"? Is this the same as "collateralizing" a letter of credit? Is it the same as "earmarking" an account? If not, please explain the differences.

9. On August 15, 1990, the Department of Treasury's Office of Foreign Assets Control issued General License Number 7 detailing the regulations governing the Kuwait Assets Control Regulations and the Iraqi Sanctions Regulations. Then on October 18, 1990, OFAC issued an amended General License Number 7.

A. Please explain the primary differences between the first version and the amended version.

B. Please explain the rationale driving the change in the regulations a mere two months after they were issued.

C. Please provide a copy of the decision memorandum approving any policy change.

10. Using the Dames & Moore vs. Regan argument, does the President have the authority, in order to ensure the most equitable distribution of frozen Iraqi assets among all claimants, to order all U.S. parties that received frozen Iraqi assets to return those assets to blocked Iraqi accounts, to then be redistributed at a later date?

11. How many banking institutions received distributions and how many non-banking institutions or businesses received distributions?

12. As matter of general letter of credit law, is a letter of credit beneficiary entitled to be paid by the issuing or confirming bank upon timely presentation of proper documents?

13. How does a bank become a secured creditor, standing in a priority position to seek reimbursement out of blocked Iraqi assets?

14. In a letter of credit transaction, does a confirming bank have a right to reimbursement from the advising bank for payment made in good faith based on the terms of the letter of credit and proper presentation of documents?

15. Is the nationality of any of the banks involved in any one letter of credit transaction relevant if all other requirements for the letter of credit transaction have been fulfilled?

16. Was the Veterans Administration consulted on the Iraq Claims Act of 1993 (H.R. 3221)? What is the VA's formal position on the legislation? Will H.R. 3221 insure for full compensation to military personnel? How can veterans receive full compensation for these claims?

17. Please describe the nature of veterans claims in the Iraq Claims Act of 1993.

18. If the Iraq Claims Act of 1993 were not signed into law, what impact would that have on veterans claims? Please describe all the existing programs under which American veterans of the Gulf War could be compensated for their claims.

19. Is a member of the U.S. military entitled to file a claim against the country it fought in a military struggle? If so, under what authority and for what cause?

20. Does the vesting provision of the Iraq Claims Act meet the constitutional standard of *Becker Steel?*

21. Has the United State government ever vested foreign assets frozen pursuant to the International Economic and Emergency Powers Act (IEEPA)? By what authority?

22. Has the United States government ever used foreign assets frozen pursuant to IEEPA to pay claims of U.S. service personnel? By what authority?

23. Has the United States government ever vested or unblocked foreign assets frozen pursuant to IEEPA absent an agreement with the foreign government whose assets were frozen?

24. Please provide a list or inventory of the offset obligations of Iraqi entities to U.S. banks.

25. During the House of Representatives consideration of H.R. 3221, the Administration submitted testimony summarizing the categories of United Nations Compensation Commission claims.

- How do you define "individuals" in Categories A, B, C and D?
- Does the term include both military and non-military individuals?
- Does the term "individuals" include the spouse, children, parent or other relatives of U.S. military combatants?

SECRETARY BENTSEN'S RESPONSE TO SENATOR HELMS—FIRST RESPONSE

DEPARTMENT OF THE TREASURY,
WASHINGTON, DC,
September 20, 1994.

The HONORABLE JESSE HELMS,
United States Senate, Washington, DC

DEAR JESSE: Thank you for your letter of August 29, 1994, seeking information in connection with H.R. 3221, the Iraq Claims Act of 1994. Your letter contains a list of detailed questions relating to compensation of U.S. nationals on their claims against Iraq requiring extensive research and coordination with the State Department.

Enclosed for your information is a background summary concerning the issues you raised. I hope the information contained therein will be of assistance as you review the bill and that you and the members of the Foreign Relations Committee will join us in supporting the legislation.

Sincerely,

LLOYD BENTSEN,
Secretary of the Treasury.

Enclosure

BACKGROUND SUMMARY

Subject: Information Concerning the Iraq Claims Act of 1994.

Background

This background paper is in response to a list of questions contained in a letter from Senator Jesse Helms, dated August 29, 1994, seeking information in connection with H.R. 3221, the Iraq Claims Act of 1994 (the "Act"). The discussion below specifically addresses the Senator's detailed questions regarding the Act, Treasury's licensing actions and policies toward letters of credit, the compensation of U.S. claimants against Iraq, and numerous related issues.

Discussion

We believe that the best approach to compensation issues is one that will allocate available assets equitably among similarly-situated claimants. To this end, the Administration transmitted to the Congressional leadership on August 2, 1993, a bill, the "Iraq Claims Act of 1993," which has been passed by the House of Representatives with few changes as H.R. 3221. The bill would authorize adjudication of U.S. nationals' claims in a single forum, the Foreign Claims Settlement Commission ("FCSC"), applying consistent standards of proof, and permit the President to compensate claimants by vesting blocked Iraqi assets in the United States. We believe this approach is far preferable to the piecemeal approach represented by individual lawsuits or by other proposals addressing only small segments of the claimant community.

The questions in the Senator's letter are similar to those received from other members of the Senate and the House of Representatives over the past two years. The responses below are consistent with the information provided to them in those areas of similarity in request. Many of the inquiries call for the disclosure of confidential information supplied to the Office of Foreign Assets Control ("FAC") by license applicants or by reporters on censuses of assets and claims with the expectation that their confidentiality would be respected. Other questions relate to issues that are the subject of current litigation involving FAC. In those areas, we have been as full and complete in our responses as is consistent with our obligations to protect submitters' confidential business information and to preserve the interests of the United States in pending litigation.

The FAC licensing policies to which the questions relate are set out in the Iraqi Sanctions Regulations, 31 C.F.R. Part 575, (the "Regulations") and licensing practice is fully consistent with the Regulations. The specific information requested regarding FAC licensing actions is voluminous. Moreover, we are constrained by the confidential business nature of much of the information requested. Within these constraints, we can provide the following information to Senator Helms regarding letter of credit licenses. As of September 15, 1994, FAC had authorized 57 transactions by specific license for applications meeting the requirements of General License No. 7 or section 575.510 of the Regulations, authorizing payment pursuant to commercial letters of credit from Iraqi accounts blocked it the United States. The aggregate value of the licensed payment was approximately $76 million.

The beneficiaries of these payments had completed, prior to August 2, 1990, all transactions required for payment under the letters of credit and, in the absence of sanctions, would have been paid by the legally obligated U.S. banks upon timely presentation of conforming documents.

If a license application does not meet the criteria established in the Regulations, the license is not granted. FAC has denied 116 license applications relating to letter of credit arrangements. In each case the authorization requested was denied because the transaction failed to meet the criteria established for licensing pursuant to either General License No. 7 or to section 575.510. The aggregate value of the non-qualifying transactions was approximately $288 million.

With respect to the questions about U.S. claims against Iraq, the exact number and amount have not been established. The legislation calls for the FCSC to officially collect and adjudicate these claims. More than 1250 U.S. persons reported

claims against Iraq on a Treasury Department census of unadjudicated claims conducted in 1991 prior to Operation Desert Storm and the liberation of Kuwait. Based on information from the Department of Defense, we estimate there may be 2400 claims by U.S. servicemen or their families for deaths or serious injuries during the Persian Gulf War. We estimate that the claims against Iraq may total up to $5 billion.

The proposed legislation would not, by itself, guarantee full compensation to U.S. claimants whose claims are outside the jurisdiction of the U.N. Compensation Commission. The value of those claims is expected to exceed by a large amount the value of frozen Iraqi assets in the United States. Nevertheless, the proposed legislation would provide a fair opportunity for all such claimants to obtain substantial compensation in a reasonably short period. Furthermore, this legislation would in no way extinguish or limit any unsatisfied part of these claims, and the U.S. Government and U.S. nationals would retain the right to pursue such claims against Iraq in the future in any way that is lawfully open to them. In this regard, the adjudication process under the proposed legislation affords a mechanism for claimants to record permanently evidence needed to obtain further compensation on their claims if and when that becomes feasible.

Approximately 80 U.S. banks and other U.S. persons currently hold about $1,285 million in frozen Iraqi assets. This includes the $200 million which has been set aside for transfer temporarily to a special United Nations escrow account to implement U.N. Security Council Resolution 778. These loaned funds will be returned with interest after Iraq begins exporting oil in accordance with relevant U.N. Security Council resolutions. The bulk of the remaining funds, slightly over one billion dollars, is held in 22 U.S. banks for the account of three Iraqi banks. Following our traditional and customary practice of protecting the business confidentiality of U.S. persons reporting such information to us, we do not release the names of holders or actual account data. Based on information submitted to us on the aforementioned census of unadjudicated claims, we estimate that U.S. banks will assert claims of at least $115 million against the blocked assets. Following our traditional prohibitions against setoffs, we have not permitted the banks to set off any of these unsecured claims against any blocked Iraqi funds they hold.

The Regulations follow standard banking practices with regard to matters relating to letters of credit. FAC has not established practices regarding letters of credit outside of standard practice. Under standard letter of credit practice, an issuing or confirming bank undertakes an engagement to pay the beneficiary from its own funds upon fulfillment of the payment conditions stated in the letter of credit. Where a bank confirms a reimbursement credit, thereby binding itself to pay from its own funds if the requirements of the credit are met, the confirming reimbursing bank often requires the pledging of collateral by the issuing bank. These funds are identified to the letter of credit and are pledged to the repayment of the confirming reimbursing bank if the terms of the reimbursement credit are met. Thus, the confirmed reimbursing bank has obtained security for its obligation. Stated in another way, in order for a bank to be a secured creditor, an authenticated pledge agreement should exist demonstrating that collateral has actually been pledged. Absent such an agreement, collateral has not been pledged. Collateral may not be withdrawn or otherwise used until the letter of credit expires, at which time the pledged funds revert to the issuing bank's account.

These arrangements are not undertaken where a bank advises a letter of credit or acts as reimbursing bank without confirming its reimbursement. An issuing bank assumes a binding obligation to pay on the letter of credit if its terms are met.

Several of the Senator's questions address the rationale for the Treasury Department's policy with respect to letters of credit. The prohibitions and policies implementing the Presidential declaration of national emergency with respect to Iraq are set forth in the Regulations. The Department's policy with respect to pre-sanctions letters of credit is set out at section 575.510 of the Regulations. Section 575.510 provides for the issuance of specific licenses on a case-by-case basis to permit payment involving a pre-August 2, 1990, irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank. The nationality of any bank involved in a letter of credit transaction may affect FAC's ability to regulate the transaction, in view of FAC's inability to regulate non-U.S. persons. Non-U.S. banks involved in transactions that meet the requirements of the Regulations may benefit from the issuance of a license. Section 575.510 provides a reasonable and properly limited basis for permitting the unblocking of Iraqi government property only where payment is required as a mandatory and binding legal obligation of a U.S. bank. In contrast to the legal obligation imposed upon a bank which confirms a letter of credit, an advising bank has no independent obligation to pay a beneficiary, even upon the beneficiary's compliance with the terms of the

letter of credit. FAC's licensing policy is based on this significant difference in the bank's legal obligations, which preserves the distinction between secured and unsecured creditors of Iraq.

The distinction made in section 575.510 is based on distinctions in letter of credit obligations universally recognized in banking and international financial transactions. These distinctions are set forth in the Uniform Customs and Practices for Documentary Credits, 1983 revision (ICC Publication No. 400—"UCP"), in effect at the inception of sanctions against Iraq, and the Uniform Customs and Practices for Documentary Credits, 1993 revision (ICC Publication No. 500), which are incorporated by reference as the governing law of most international letters of credit. In issuing or confirming a letter of credit, a bank contracts to pay the beneficiary from its own funds upon fulfillment of the payment conditions of the letter of credit contract. UCP, Art. 10(b). This is starkly different from advising a letter of credit, which is a simple accommodation to another bank to notify that bank's beneficiary that a letter of credit has been issued, and, if amended, what amendments have been made. The advising bank acts much as a messenger; it is a complete stranger to the letter of credit contract, and undertakes no obligation to any party to the contract to make payment. UCP, Arts. 6 and 8; see Art. 12.

As originally promulgated on August 15, 1990, General License 7 permitted U.S. persons to apply for licenses to receive payment for, *inter alia*, goods shipped by U.S. persons or from the United States to Iraq prior to imposition of the embargo. FAC policy was later changed, following interagency consultations, and an amended General License 7 was issued on October 18, 1990. The amended general license is now codified at section 575.510, with minor modifications. The amended General License 7 expanded eligibility to permit licenses to be issued to non-U.S. persons, but restricted licensing to payments based on letters of credit issued or confirmed by U.S. banks, or credit reimbursements confirmed by U.S. banks. The change in FAC policy reflected in amended General License 7 was to license payments only to those exporters with respect to which a U.S. bank had undertaken a mandatory, binding obligation to pay under a letter of credit, and permitted reimbursement of banks that had become secured creditors of Iraq prior to August 2, 1990, under recognized principles of U.S. and international letter of credit law.

The policy basis for the denial of access to blocked Iraqi assets to beneficiaries of advised Iraqi letters of credit on which no person in the United States has any payment obligation has been reviewed by this and the former Administration and has been affirmed as the policy of the United States. Such beneficiaries are not differently situated from any other unsecured creditor of Iraq, and should not receive priority over other unsecured creditors. Moreover, a U.S. advising bank making payment on an Iraqi letter of credit would have assumed and satisfied an obligation of an Iraqi bank which it was not obligated to do, in complete contravention of the goals of the Presidential sanctions program. In contrast, licenses issued pursuant to section 575.510 of the Regulations provide for payment to beneficiaries of Iraqi letters of credit only where an independent legal obligation to pay the beneficiary from non-Iraqi funds exists on the part of a U.S. bank. The confirming bank, in turn, is only licensed to reimburse itself from blocked Iraqi funds that, prior to the imposition of sanctions, and pursuant to the confirmation, were specifically set aside as collateral for the U.S. bank's payment obligation.

With regard to requests for analysis of particular cases, the matters about which Senator Helms inquires are the subject of active litigation, both in the district court and in New York. We believe that it would be inadvisable to comment on the government's position in ongoing litigation.

The Senator also asked about the circumstances under which a letter of credit beneficiary is entitled to be paid. The Uniform Customs and Practice for Documentary Credits (1983 Revision, ICC Publication No. 400) ["UCP 400"], especially its Article 10, and the Uniform Customs and Practice for Documentary Credits (1993 Revision, ICC Publication No. 500) ["UCP 500"], especially its Article 9, address the obligations of issuing and confirming banks. UCP 400 was in effect at the inception of the Iraqi sanctions program and UCP 500 is in effect today. Publication No. 511 of the International Chamber of Commerce contains a nuanced discussion of the differences between UCP 400 and UCP 500 in this regard. Additionally, a bank which has added its confirmation does have the right to be reimbursed by an issuing bank if the issuing bank finds the documents presented to be timely and conforming.

Several questions were raised regarding consultation with the Department of Veterans Affairs ("VA") on the Iraqi Claims Act and veterans claims. The VA was consulted about the Act, and fully supports the legislation. As noted in the letter of transmittal for the Act, the legislation does not insure full compensation to any group of U.S. claimants, including military personnel, because there are not enough frozen Iraqi assets available to satisfy all valid claims. However, the legislation does

provide a preference to members of the U.S. Armed Forces (or their survivors) to receive payments of up to $100,000 for deaths or injuries resulting from the invasion and occupation of Kuwait, or the 1987 attack on the U.S.S. Stark. This will provide substantial relief to U.S. servicemen and their families.

Claims by members of the U.S. Armed Forces or their survivors would include those for death or serious personal injury while they were deployed during operation Desert Shield and Desert Storm, as well as those for injuries sustained during the 1987 attack on the U.S.S. Stark. (Death claims from the attack on the Stark were compensated before the Persian Gulf War.) There were about 400 U.S. service personnel killed and 2000 injured during Desert Shield and Desert Storm. About 60 U.S. seamen were injured in the attack on the U.S.S. Stark.

If the Act does not become law, members of the U.S. Armed Forces or their survivors would have no other avenue available to pursue such claims against Iraq. There is no practical prospect of resolving such claims through negotiations with Iraq. Nor would they be able to submit such claims to the U.N. compensation system, unless they were prisoners of war who were mistreated under international humanitarian law.

Under U.S. law, members of the U.S. Armed Forces or their survivors are entitled to certain benefits under programs administered by the Department of Defense and the VA. For those who were seriously injured, these benefits may include military disability retirement or severance pay, VA disability compensation for a service-connected injury, VA medical and hospitalization benefits, and VA vocational rehabilitation. For the survivors of military decedents, these benefits may include a death gratuity ($6,000), payment for unused leave, burial costs (up to $4,850), payments under the servicemen's group life insurance program (up to $200,000), the survivor benefit plan ("BFP") (if the decedent was eligible for retirement), a VA dependency and indemnity compensation ("DIC") payment, a social security death benefit (same as civilian), health care on a "space available" basis, temporary extension of housing benefits, commissary and exchange privileges and certain tax exemptions. Under the Act, veterans or their survivors would be able to claim for any losses that are not compensated under existing U.S. law. Any compensation received under the Act would not reduce their benefits under existing U.S. law. However, the sum of any compensation received under the Act and benefits from other programs may not exceed the total amount of the loss.

In this case, there is a clear authority for paying the claims of members of the U.S. Armed Forces against Iraq. U.N. Security Council Resolution 687 (1991) decided that "Iraq * * * is liable under international law for any direct loss, damage * * * or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait." This binding resolution confirms Iraq's liability for death or injury claims by U.S. military personnel (or their survivors) as a result of the Persian Gulf conflict.

There are also supporting precedents in prior U.S. claims practice. In the early 1950s, amendments to the War Claims Act directed that U.S. servicemen held as prisoners of war be compensated for mistreatment while in captivity out of liquidated German and Japanese assets in the United States. In 1967 Israel attacked the U.S.S. Liberty, and 34 seamen were killed. The United States made wrongful death claims against Israel and recovered more than $3 million. After the 1987 Iraqi attack on the U.S.S. Stark, the United States presented wrongful death claims for the 37 crew members who were killed. The two countries settled these claims in 1989 for about $27 million, and the funds were paid to the beneficiaries. Claims on behalf of those injured in the attack on the U.S.S. Stark, however, were not fully resolved when Iraq invaded Kuwait.

The International Emergency Economic Powers Act ("IEEPA") does not provide for the vesting of blocked assets, which requires separate legislation. The President has not previously sought vesting of assets blocked pursuant to IEEPA, nor have blocking controls been removed under IEEPA absent an agreement with the foreign government whose assets were frozen. The vesting authority proposed with respect to Iraqi assets fully complies with all requirements of the law. We have been advised by the State Department that, as noted in the letter of transmittal for the Act, there is no practical prospect of negotiating a settlement of these claims with Iraq.

Claims of U.S. nationals against Iraq are estimated to greatly exceed blocked Iraqi assets in the United States. Against this background, we must ensure that any distribution from blocked assets is pursuant to a system that compensates similarly-situated claimants in an even-handed manner. We believe that legislation establishing a single domestic claims settlement forum, applying consistent standards of proof, and permitting the vesting of blocked Iraqi assets from which to compensate claimants, will provide consistent treatment of claimants and avoid compensation on the basis of a race to the courthouse.

SECRETARY BENTSEN'S RESPONSE TO SENATOR HELMS—SECOND RESPONSE

[After resubmitting the questions to the Treasury Department, Senator Helms received the following answers]

DEPARTMENT OF THE TREASURY,
WASHINGTON, DC,
November 15, 1994.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC

DEAR SENATOR HELMS: This is in response to the written and oral questions submitted to me during Senate hearings on the Iraq Claims Act on September 21, 1994. The first twenty-four questions are similar to those contained in your letter to Secretary Bentsen of August 29, 1994, concerning the same issue.

I have responded below to your questions in the order in which they were posed. The answers to your questions regarding claims settlements and related issues have been provided by the State Department. The questions submitted orally are answered after the written questions.

The questions in your letter are similar to those received by Treasury from other members of the Senate and House of Representatives over the past two years. Many of the inquiries call for the disclosure of confidential information supplied to the Office of Foreign Assets Control ("FAC") by license applicants or by reporters on censuses of assets and claims with the expectation that their confidentiality would be respected. Other questions relate to issues that are the subject of current litigation involving FAC. In those areas, we have endeavored to be as full and complete in our responses as is consistent with our obligations to protect submitters' confidential business information and to preserve the interests of the United States in pending litigation.

1) I am interested in obtaining information pertaining to any and all license applications Treasury has received and licenses Treasury has granted that would debit frozen or blocked Iraqi funds since August 2, 1990. I am particularly interested in the following information for each claim:

A. Name and nationality of the licensee;
B. Date of application;
C. Date of issue;
D. Amount authorized to be released from a blocked Iraqi account;
E. Name of institution in which funds were held;
F. Iraqi party in whose name funds were held;
G. In cases involving letters of credit, please provide the following:
i. Name, address and nationality of the beneficiary of the letter of credit;
ii. Name of the Iraqi party for whom the letter of credit was opened;
iii Name of the Iraqi buyer of the goods or services, if different from the party listed in ii;
iv. Description of the goods and services sold;
v. Name and nationalities of all banks involved in the transaction (including the issuing, confirming, advising, paying, and/or reimbursing bank, as appropriate);
vi. Evidence proving that the bank's letter of credit debt was secured;
H. Date funds were released and amount released; and
I. Treasury's justification for issuing the license.

Answer. FAC licensing policies are set out in the Iraq Sanctions Regulations (31 CFR Part 575—the "Regulations"), and the licensing practice reflected in this response is fully consistent with the Regulations. Currently under preparation and to be forwarded under separate cover, not for inclusion in the hearing record, is a summary of licenses granted with regard to blocked accounts located in the United States. Please note that information regarding nationality of the parties is generally not contained in our files. A limited amount of information concerning these licenses had been withheld due to the business confidential nature of the information and the expectation of the submitter that the information would not be disclosed. This includes transaction amounts, references to specific bank documents relating to collateralization of letters of credit, and information provided by banks in compliance reports.

The bases for issuance of licenses authorizing debits of blocked Iraqi funds include, in addition to satisfaction of the conditions of section 575.510 of the Regulations or its precursor, General License 7 amended, the following categories: customary service charges related to maintaining accounts or blocked property; continuation of limited Iraqi diplomatic activities; compliance with Executive Order 12817, in conformity with U.N. Security Council Resolution 778; correction of bank errors; completion of sovereign debt payment due payable and ordered pre-sanctions; re-

lease to non-Iraqi parties of non-Iraqi funds erroneously blocked because the transfer referenced humanitarian aid or other projects in Iraq; transfer from U.S. company's pre-sanctions escrow account; and debits from accounts of U.S. individuals or entities determined to be Specially Designated Nationals of Iraq for living expenses and preservation of blocked assets.

2) Have you denied a license to any U.S. bank that issued or confirmed a letter of credit for a contract on which goods or services were shipped to Iraq prior to August 2, 1990?

Answer. Yes, in cases where the license applications did not meet the criteria established in the Regulations.

3) What is your best estimate for the total dollar amount of pre-invasion and post-invasion claims against Iraqi funds frozen in the United States? (Please give a specific dollar amount broken down by: U.S. servicemen, the U.S. government, U.S. banks, U.S. businesses and individuals. If you do not have the specific figures, please estimate the amount based on the dollar amount of claims for which licenses have already been filed, as well as the dollar amount of claims estimated to be filed if H.R. 3221 were passed into law.)

Answer. This answer also addresses a written question submitted to Treasury and State in the September 21 hearings, shown herein after question number 25.

Treasury conducted a census of potential claims against Iraq in January 1991, prior to Operation Desert Storm and the liberation of Kuwait. The census was conducted before the criteria for the U.N. compensation system were established. The estimated breakdown of those claims are shown on the next page.

Treasury has not conducted a further census of claims and is currently unaware of any additional pre-invasion claims above and beyond the approximately $3.1 billion figure shown as pre-August 2, 1990. Those shown as post-August 2, 1990 overlap to some degree with claims that may fall within the scope of the U.N. Compensation Commission. Since the U.N. criteria placed limits on the eligibility of claims that could be filed, a substantial portion of the claims arising post-August 2, 1990 reported to Treasury are not eligible for submission to the U.N. These include claims which were not the direct result of the invasion and occupation of Kuwait, such as those caused solely by the trade embargo and related matters.

We are informed by the State Department that to date $215 million in claims on behalf of individuals, $1.5 billion in claims on behalf of U.S. companies, and $17 million in claims on behalf of the U.S. Government have been filed with the U.N. Compensation Commission. In addition, we are advised that there may be 2400 claims by U.S. servicemen or their families for deaths or serious injuries during the Persian Gulf War.

Answers to questions 4–6 were provided to us by the State Department.

4) I understand that if H.R. 3221 were enacted as passed by the House of Representatives, all U.S. parties (government, businesses and individuals) would be compensated at a pro rata rate far below their original debts. Please explain the policy behind the Administration's decision to agree to compensate entities for less than one hundred (100) percent of their claims?

Claims Against Iraq as of January 15, 1991 [1]

[in millions]

	Claimants	Pre-8/2/90 [2] Claim	Post-8/2/90 Claims
Claims by Individuals [3]	828	.....	944.2
Claims by Businesses [4]	401	829.3	1,280.2
Claims by U.S. Government [5]	10	2,177.1	50.2
Claims by Banks [6]	16	114.5	.....
Totals	.....	$3,119.9	$2,274.6
Grand Total	.....	.....	$5,394.5

[1] These estimates are based on a census of unadjudicated claims conducted by the Treasury Department in early 1991, immediately prior to the Desert Storm campaign. These estimates do not include claims arising after the beginning of Desert Storm hostilities on January 16, 1991.

[2] Date of Iraqi invasion of Kuwait.

[3] Includes claims for expropriation of personal property, salaries & benefits, personal injury, and other damages.

[4] Includes claims for expropriation of property and equity, overdue loans and credits, receivables, and breach of contract.

[5] Includes CCC claims, EXIM bank claims, damages to the USS Stark, and other damages.

[6] Includes direct loans, syndicated loans, and other credits.

Answer. The Administration's policy is to seek full recovery for the claims of all U.S. businesses and individuals. The proposed legislation would not, by itself, guarantee full compensation to U.S. claimants whose claims are outside the jurisdiction of the U.N. Compensation Commission. The value of the claims presented is expected to exceed by a large amount the value of frozen Iraqi assets in the United States. Nevertheless, the proposed legislation would provide a fair opportunity for all such claimants to obtain substantial compensation in a relatively short period. Furthermore, this legislation would in no way extinguish or limit any unsatisfied part of these claims, and the U.S. government and U.S. nationals would retain the right to pursue such claims against Iraq in the future in any way that is lawfully open to them. In this regard, the adjudication process under the proposed legislation affords a mechanism for claimants to record permanently evidence needed to obtain further compensation on their claims if and when that becomes feasible. As in prior cases, the United States government would seek to obtain funds to pay the unsatisfied awards of U.S. nationals, as soon as it becomes possible to do so.

5) When did the U.S. government make the policy decision to agree to less than one hundred (100) percent reimbursement for U.S. government debts? Please provide a copy of the decision memorandum. Has this decision been reviewed?

Answer. The Administration's policy is to seek full recovery for debts owed to the United States government. The government has not decided to accept less than one hundred (100) percent reimbursement for its claims. The legislation would not extinguish or limit any unsatisfied part of the U.S government's claim, which we would be able to pursue against Iraq if and when that becomes feasible. The legislation has been reviewed and cleared by all relevant agencies through the Office of Management and Budget.

6) Why did the Administration's proposed bill language allow the United States government to compete directly with United States businesses for compensation for its claims against the government of Iraq?

Answer. The U.S. government on behalf of U.S. taxpayers should be allowed to seek recovery for its claims against Iraq, the same as other claimants. We believe this would be fair to U.S. taxpayers, particularly since the bulk of the U.S. governments's claims resulted from export guarantees issued by the Commodity Credit Corporation. Under that program, the government reimbursed private U.S. exporters or their banks for commodities shipped to Iraq, which were never paid for. In return, the exporters assigned their claims to the government. The proposed legislation, as passed by the House of Representatives, would allow the U.S. government to recover up to a proportionate share of funds for its valid claims out of frozen Iraqi assets.

7) Which United States financial institutions currently hold frozen or blocked accounts of frozen Iraqi assets? Please provide the list of institutions, the name of the Iraqi entities whose funds are frozen by each institution and the amount of funds. Please identify the amount of funds, if any, for which each institution is seeking compensation from frozen Iraqi funds.

Answer. Approximately 40 U.S. banks currently hold about $1.3 billion in frozen Iraqi assets. This includes the $200 million which has been set aside for transfer temporarily to a special United Nations escrow account to implement U.N. Security Council Resolution 778. These loaned funds will be returned with interest after Iraq begins exporting oil in accordance with relevant U.N. Security Council Resolutions. Most of the blocked funds are held for the account of three Iraqi banks. Based on information submitted to us on a census of unadjudicated claims conducted in 1991 prior to Operation Desert Storm and the liberation of Kuwait, we estimate that some 14 U.S. banks will assert claims of at least $115 million against the blocked assets.

In addition to the funds held by banking institutions approximately 40 non-banking institutions hold about $27 million in frozen Iraqi assets.

Most of the above information was reported to FAC on a census of blocked Iraqi assets conducted in early 1991. The reporters on the census relied on an express pledge that the information would be regarded as privileged and confidential. Violation of this pledge would significantly affect the ability of FAC to collect information and discourage cooperation and voluntary compliance by U.S. reporters in the future. Accordingly, our practice is to release only aggregate data and not release the names of holders or actual account data.

8) How does a U.S. bank secure a letter of credit it issues or confirms in order to become a "secured creditor"? Is this the same as "collateralizing" a letter of credit? Is it the same as "earmarking" an account? If not, please explain the differences.

Answer. In order for an issuing bank or confirming bank to be a secured creditor, an authenticated pledge agreement should exist demonstrating that collateral has

actually been pledged. "Earmarking" an account, without such an agreement, is not the same as pledging collateral.

The Regulations follow standard banking practices with regard to these matters. FAC has not established practices regarding letters of credit outside of standard practice. See affidavit from the Bank of New York (attached). Under standard letter of credit practice, an issuing or confirming bank undertakes an engagement to pay the beneficiary from its own funds upon fulfillment of the payment conditions stated in the letter of credit. Where a bank confirms a reimbursement credit, thereby binding itself to pay from its own funds if the requirements of the credit are met, the confirming reimbursing bank often requires the pledging of collateral by the issuing bank. These funds are identified to the letter of credit and are pledged to the repayment of the confirming reimbursing bank if the terms of the reimbursement credit are met. Thus, the confirmed reimbursing bank has obtained security for its obligation. Stated another way, in order for a bank to be a secured creditor, an authenticated pledge agreement should exist demonstrating that collateral has actually been pledged. Absent such an agreement, collateral has not been pledged. Collateral may not be withdrawn or otherwise used until the letter of credit expires, at which time the pledged funds r[illegible]rt to the issuing bank's account.

9) On August 15, 1990, the Department of the Treasury's Office of Foreign Assets Control issued General License Number 7 detailing the regulations governing the Kuwait Assets Control Regulations and the Iraqi Sanctions Regulations. Then on October 18, 1990, FAC issued an amended General License Number 7.

A. Please explain the primary differences between the first version and the amended version.

B. Please explain the rationale driving the change in the regulations a mere two months after they were issued.

C. Please provide a copy of the decision memorandum approving any policy change.

Answer. [A] As originally promulgated on August 15, 1990, two weeks into FAC's simultaneous imposition of sanctions against Iraq and Kuwait, General License 7 permitted U.S. persons to apply for licenses to receive payment for, *inter alia,* goods shipped by U.S. persons or from the United States to Iraq prior to imposition of the embargo. An amended General License 7 was issued on October 18, 1990, following internal discussions and interagency consultations. The amended general license is now codified at section 575.510, with minor modifications. The amended General License 7 expanded eligibility to permit licenses to be issued to non-U.S. persons, but restricted licensing to payments based on letters of credit issued or confirmed by U.S. banks, or credit reimbursements confirmed by U.S. banks.

[B] General License 7 was issued to address two sanctions programs serving very different functions; punitive in the case of Iraq, protective in that of Kuwait. To maintain sufficient flexibility to serve the foreign policy goals of both programs, the General License was permissive, stating on its face that "licenses may be issued on a case-by-case basis."

It was soon apparent that the language of General License 7 was overly broad. First, it permitted the issuance of a license to any unsecured U.S. exporter dealing with Iraq, including those selling on an unsecured basis such as on open account. It in essence treated all exporters as secured creditors, although many were not. Second, General License 7 could have resulted in a massive dissipation of blocked assets at a time when FAC lacked knowledge of the total value of either claims or assets. It would not have been prudent to authorize such a broad unblocking without information regarding the value of all assets, especially given the possibility of claims vastly exceeding assets. A census of U.S. claims against Iraq and blocked Iraqi assets held by U.S. persons was completed early in 1991, confirming concerns regarding the availability of assets relative to claims. See 31 CFR 575.604–.605. The census demonstrated not only the need to preserve blocked assets pending adjudication of all claims, but also the need for an orderly process for distribution of limited assets.

An amended General License 7 was issued on October 18, 1990, following internal discussion and interagency consultations. The amended general license is now codified at section 575.510, with minor modifications. The amended General License 7 expanded eligibility to permit licenses to be issued to non-U.S. persons, such as foreign subsidiaries of U.S. firms. This step was necessary in the context of a multilateral blocking program to ensure a degree of reciprocity helpful to U.S. firms' claims in third countries. The amendment also restricted licensing to payment based on letters of credit issued or confirmed by U.S. banks, or credit reimbursements confirmed by U.S. banks. General License 7, amended, provided for the issuance of licenses for payments only to those exporters with respect to which a U.S. bank had undertaken a mandatory, binding obligation to pay under a letter of credit, and permitted

reimbursement from blocked Iraqi collateral for such payments by banks that had become secured creditors of Iraq prior to August 2, 1990, under recognized principles of U.S. and international letter of credit law.

[C] As Mr. Newcomb testified on September 21, this and numerous other issues relating to the Iraq and Kuwait sanctions were vetted and cleared through conversations with senior Treasury, State, and NSC officials in the late summer and early fall of 1990.

10) Using the *Dames & Moore* v. *Regan* argument, does the President have the authority, in order to ensure the most equitable distribution of frozen assets among all claimants, to order all U.S. parties that received frozen Iraqi assets to return those assets to blocked Iraqi accounts, to then be redistributed at a later date?

Answer. In *Dames & Moore* v. *Regan*, 453 U.S. 654, 669–74 (U.S. 1981), the Supreme Court held that the President was authorized by the International Emergency Economic Powers Act ("IEEPA") to nullify judicial attachments of blocked Iranian property which occurred after the imposition of sanctions, and to direct the transfer of blocked Iranian funds and securities by persons holding them. This case supports a very broad reading of the President's authority under IEEPA. The particular question you raise appears to be directly relevant to ongoing litigation in *Consarc Corporation* v. *Iraqi Ministry*, 27 F. 3d 695 (D.C. Cir. 1994), in which the U.S. Court of Appeals found for the U.S. Government on its claim that $6.4 million sought by Consarc in connection with a letter of credit advised by a U.S. bank was properly blocked and must be returned to a blocked account. The case was remanded to the district court and is the subject of ongoing proceedings. Therefore we cannot comment any further at this time because of the litigation constraints we now face. When this case concludes we can explore issues you have raised in greater depth at your convenience.

11) How many banking institutions received distributions and how many non-banking institutions or businesses received distributions?

Answer. No bank received a distribution pursuant to a license authorizing payment under a letter of credit unless an exporter received payment. These licenses resulted in 74 distributions to letter of credit beneficiaries, totalling approximately $145 million. In 51 of these cases, involving $57 million, the banks, as secured creditors, were allowed to reimburse themselves from pledged collateral. In 23 cases, involving $88 million, payment was made to beneficiaries of letters of credit from the confirming banks' own funds and no reimbursement from Iraqi accounts was permitted. In these latter cases, the beneficiaries of the letters of credit were paid and the confirming banks were left with outstanding claims against Iraq.

12) As a matter of general letter of credit law, is a letter of credit beneficiary entitled to be paid by the issuing or confirming bank upon timely presentation of proper documents?

Answer. In issuing or confirming a letter of credit, a bank contracts to pay the beneficiary from its own funds upon fulfillment of the payment conditions of the letter of credit contract. This is starkly different from advising a letter of credit, which is a simple accommodation to another bank to notify that bank's beneficiary that a letter of credit has been issued, and, if amended, what amendments have been made. The advising bank acts much as a messenger; it is a complete stranger to the letter of credit contract, and undertakes no obligation to any party to the contract to make payment. These distinctions are set forth in the Uniform Customs and Practices for Documentary Credits, 1983 revision (ICC Publication No. 400—"UCP"), in effect at the inception of sanctions against Iraq, and the Uniform Customs and Practices for Documentary Credits, 1993 revision (ICC Publication No. 500), which are incorporated by reference as the governing law of most international letters of credit. See UCP Art. 6, 8, 10(b), 12. Where a paying or reimbursing bank is involved in a letter of credit transaction, additional steps may be required. The right to receive payment from an issuing bank upon satisfaction of the terms of the letter of credit does not attach to particular assets of that bank unless collateral has been pledged, and the terms of any relevant agreements or notification requirements have been met. Moreover, collateral is generally pledged by the issuing bank to repay a confirming bank which makes payment on its confirmation agreement. Collateral is not usually pledged by the issuing bank for payment directly to the beneficiary. See affidavit from the Bank of New York.

[The affidavit referred to may be found in committee files.]

13) How does a bank become a secured creditor, standing in a priority position to seek reimbursement out of blocked Iraqi assets?

Answer. A bank becomes a secured creditor following the normal and accepted banking practice of securing a pledge of collateral in conjunction with issuing or confirming a letter of credit. Banks in this situation bargain for the contractual pledge of collateral in conjunction with issuing or confirming the letter of credit.

14) In a letter of credit transaction, does a confirming bank have a right to reimbursement from the advising bank for payment made in good faith based on the terms of the letter of credit and proper presentation of documents?

Answer. We are not aware of circumstances where an advising bank is obligated to reimburse a confirming bank in a letter of credit transaction.

15) Is the nationality of any of the banks involved in any one letter of credit transaction relevant if all other requirements for the letter of credit transaction have been fulfilled?

Answer. Our policy with respect to pre-sanctions letters of credit is set out at section 575.510 of the Regulations. Section 575.510 provides for the issuance of specific licenses on a case-by-case basis to permit payment involving a pre-August 2, 1990, irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank. The nationality of any bank involved in a letter of credit transaction may affect FAC's ability to regulate the transaction, in view of FAC's inability to regulate non-U.S. persons. Non-U.S. banks involved in transactions that meet the requirements of the Regulations may benefit from the issuance of a license.

Answers to questions 16–19 were provided to us by the State Department.

16) Was the Veterans Administration consulted on the Iraq Claims Act of 1993 (H.R. 3221)? What is the VA's formal position on the legislation? Will H.R. 3221 insure for full compensation to military personnel? How can veterans receive full compensation for these claims?

Answer. The Department of Veterans Affairs ("VA") was consulted about the Act, and fully supports the legislation. As noted in the letter of transmittal for the Act, the legislation does not insure full compensation to any group of U.S. claimants, including military personnel, because there are not enough frozen Iraqi assets available to satisfy all valid claims. However, the legislation does provide a preference to members of the U.S. Armed Forces (or their survivors) to receive payments of up to $100,000 for deaths or injuries resulting from the invasion and occupation of Kuwait, or the 1987 attack on the U.S.S. Stark. This will provide substantial relief to U.S. servicemen and their families. The legislation would not extinguish or limit any unsatisfied part of the claims, which could be pursued against Iraq if and when that becomes feasible.

17) Please describe the nature of veterans claims in the Iraq Claims Act of 1993.

Answer. Claims by members of the U.S. Armed Forces or their survivors would include those for death or serious personal injury while they were deployed during Operation Desert Shield and Desert Storm, as well as those for injuries sustained during the 1987 attack on the U.S.S. Stark. (Death claims from the attack on the Stark were compensated before the Persian Gulf War.) There were about 400 U.S. service personnel killed and 2000 injured during Desert Shield and Desert Storm. About 60 U.S. seamen were injured in the attack on the U.S.S. Stark.

18) If the Iraq Claims Act of 1993 were not signed into law, what impact would that have on veterans claims? Please describe all the existing programs under which American veterans of the Gulf War could be compensated for their claims.

Answer. If the Act does not become law, members of the U.S. Armed Forces or their survivors would have no other practical avenue available to pursue such claims against Iraq at this time. There is no practical prospect of resolving such claims through negotiations with Iraq. Nor would they be able to submit such claims to the U.N. compensation system, unless they were prisoners of war who were mistreated under international humanitarian law.

Under U.S. law, members of the U.S. Armed Forces or their survivors are entitled to certain benefits under programs administered by the Departments of Defense and Veterans Affairs ("VA"). For those who were seriously injured, these benefits may include military disability retirement or severance pay, VA disability compensation for a service-connected injury, VA medical and hospitalization benefits, and VA vocational rehabilitation. For the survivors of military decedents, these benefits may include a death gratuity ($6,000), payment for unused leave, burial costs (up to $4,850), payments under the servicemen's group life insurance program (up to $200,000), the survivor benefit plan ("SBP") (if the decedent was eligible for retirement), a VA dependency and indemnity compensation ("DIC") payment, a social security death benefit (same as civilian), health care on a "space available" basis, temporary extension of housing benefits, commissary and exchange privileges and certain tax exemptions. Under the Iraq Claims Act, veterans or their survivors would be able to claim for any losses that are not compensated under existing U.S. law for death or injury in the Gulf War or the Stark incident. Any compensation received under the Iraq Claims Act would not reduce their benefits under existing U.S. law. They could recover for losses they can prove in excess of any benefits they receive under existing law.

19) Is a member of the U.S. military entitled to file a claim against the country it fought in a military struggle? If so, under what authority and for what cause?

Answer. In this case, there is a clear authority for paying the claims of U.S. service members against Iraq. U.N. Security Council Resolution 687 (1991) decided that "Iraq * * * is liable under international law for any direct loss, damage * * * or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait." This binding resolution confirms Iraq's liability for death or injury claims by U.S. military personnel (or their survivors) as a result of the Persian Gulf conflict.

There are also supporting precedents in prior U.S. claims practice. In the early 1950s, amendments to the War Claims Act directed that U.S. servicemen held as prisoners of war be compensated for mistreatment while in captivity out of liquidated German and Japanese assets in the United States. In 1967 Israel attacked the U.S.S. Liberty, and 34 seamen were killed. The United States made wrongful death claims against Israel and recovered more than $3 million. After the 1987 Iraqi attack on the U.S.S. Stark, the United States presented wrongful death claims for the 37 crew members who were killed. The two countries settled these claims in 1989 for about $27 million, and the funds were paid to the beneficiaries. Claims on behalf of those injured in the attack on the U.S.S. Stark, however, were not fully resolved when Iraq invaded Kuwait.

20) Does the vesting provision of the Iraq Claims Act meet the constitutional standard of the *Becker Steel?*

Answer. In *Becker Steel Co.* v. *Cummings,* 296 U.S. 74 (1935), the Supreme Court reviewed a provision of the Trading With the Enemy Act ("TWEA") regarding remedies available to a non-enemy for the return of, or compensation for, property seized by the Alien Property Custodian. The Court found that TWEA provided a remedy for the non-enemy even where the property-at issue was no longer held by the Alien Property Custodian. While it is not clear that *Becker Steel* has any direct relevance to the Iraq Claims Act, it is our view that the Act satisfies the requirements of the Constitution.

21) Has the United States government ever vested foreign assets pursuant to the International Economic and Emergency Powers Act (IEEPA)? By what authority?

Answer. The United States government has never vested foreign assets under the IEEPA.

22) Has the United States government ever used foreign assets frozen pursuant to IEEPA to pay claims of U.S. service personnel? By what authority?

Answer. The United States government has never used the foreign assets frozen pursuant to the IEEPA to pay claims of U.S. service personnel.

23) Has the United States government ever vested or unblocked foreign assets frozen pursuant to IEEPA absent an agreement with the foreign government whose assets were frozen?

Answer. The United States government has never vested assets frozen pursuant to IEEPA, nor have blocking controls been removed under IEEPA absent an agreement with, or the consent of, the foreign government whose assets were frozen.

24) Please provide a list or inventory of the offset obligations of Iraqi entities to U.S. banks?

Answer. Based on information submitted to us on a census of unadjudicated claims conducted in 1991 prior to Operation Desert Storm and the liberation of Kuwait, we estimate that some 14 U.S. banks will assert claims of at least $115 million. In accordance with our traditional prohibitions against setoffs, we have not permitted the banks to offset any claims against Iraqi funds blocked in the United States. Following our traditional and customary practice of protecting the business confidentiality of U.S. persons reporting information to us, we do not release the names of the claimants, asset holders, or actual account data.

The answer to question 25 was provided to us by the State Department.

25) During the House of Representatives consideration of H.R. 3221, the Administration submitted testimony summarizing the categories of United Nations Compensation Commission claims.

A. How do you define "individuals" in Categories A, B, C, and D?

B. Does the term include both military and non-military individuals?

C. Does the term "individuals" include the spouse, children, parent or other relatives of U.S. military combatants?

Answer. [A.] As used in the UN Compensation Commission criteria and decisions, the term "individuals" means any natural person. Pursuant to a decision of the UNCC Governing Council, governments are permitted to submit to the UNCC the claims of their nationals, and may, in their discretion, submit the claims of their residents.

[B.] The term includes both military and non-military individuals. However, under a decision of the UNCC Governing Council, members of the Allied Coalition Armed Forces are not eligible for compensation before the UNCC unless they were prisoners of war and were mistreated in violation of international humanitarian law.

[C.] The term "individuals" includes the spouse, child, parent or other relatives of U.S. military combatants. The UNCC criteria provide that an individual may only submit a claim where he or she has suffered a direct loss as a result of the Iraqi invasion and occupation of Kuwait. The criteria recognize that such a direct loss may have been suffered where an individual's spouse, parent or child died as a result of the invasion. However, other relatives are not eligible to file such claims. In addition a claim by a spouse, parent or child based on the death of a U.S. military combatant is subject to the same limitations as described in response to subpart (b), above. Thus, the combatant must have been a prisoner of war and the loss must have resulted from their mistreatment in violation of international humanitarian law.

I hope this information will be of assistance to you and your colleagues as you review the legislation.

Sincerely,

RICHARD NEWCOMB,
Director, Office of Foreign Assets Control.

RESPONSES TO QUESTIONS ASKED OF MR. NEWCOMB AT THE HEARING ON SEPTEMBER 21

Question. Did these new regulations issued on October 18, 1990, narrow the scope of claimants who would be eligible to receive licenses?

Answer. This question was answered during my testimony and a more detailed response is contained in the answer to question 9 above. As noted above, the amended regulation narrowed the class of eligible claimants in one regard and broadened it in another.

Question. Did the Department of the Treasury receive any license application between the period of August 15, 1990 and October 18, 1990?

Answer. Yes.

Question. Did the Treasury deny any license applications that were, one, received between the period of August 15 and October 18, and two, met the conditions and requirements of the regulations as first published on August 15, 1990?

Answer. Yes. During the period from August 2 through October 18, 1990, FAC received 22 applications, seeking payment of approximately $19.5 million from blocked funds, which appeared to meet the terms of General License 7 but which were denied because they did not satisfy the more limited criteria of the amended General License 7.

Question. Is it normal procedure to deny an application that meets the criteria of the regulations in effect at the time the license is submitted? What would the regulations be in that case? What would be your implementation of the regulation, and which regulation would you implement?

Answer. We followed normal FAC procedures in addressing all license applications submitted in connection with the declaration of the national emergency with respect to Iraq, including applications related to letters of credit. Regulations promulgated pursuant to a declaration of a national emergency under IEEPA must change in response to changing foreign policy conditions. It is essential to the President's conduct of foreign policy that policy changes be implemented immediately. A license application is thus evaluated pursuant to the regulations as they exist at the time of a determination on the application. Any other rule would not be responsive to the changing foreign policy context facing the United States.

As originally promulgated on August 15, 1990, two weeks into FAC's simultaneous implementation of sanctions against Iraq and Kuwait, General License 7 permitted U.S. persons to apply for licenses to receive payment for, *inter alia*, goods shipped by U.S. persons or from the United States to Iraq prior to imposition of the embargo. General License 7 was issued to address two sanctions programs serving very different functions; punitive in the case of Iraq, protective in that of Kuwait. To maintain sufficient flexibility to serve the foreign policy goals of both programs, the General License was permissive, stating on its face that "licenses may be issued on a case-by-case basis."

It was soon apparent that the language of General License 7 was overly broad. First, it permitted the issuance of a license to any unsecured U.S. exporter dealing with Iraq, including those selling on an unsecured basis such as on open account. It in essence treated all exporters as secured creditors, although many were not.

Second, General License 7 could have resulted in a massive dissipation of blocked assets at a time when FAC lacked knowledge of the total value of either claims or assets. It would not have been prudent to authorize such a broad unblocking without information regarding the value of all assets, especially given the possibility of claims vastly exceeding assets. A census of U.S. claims against Iraq and blocked Iraqi assets held by U.S. persons was completed early in 1991 confirmed concerns regarding the availability of assets relative to claims. See 31 CFR 575.604-.605. The census demonstrated not only the need to preserve blocked assets pending adjudication of all claims, but also the need for an orderly process for distribution of limited assets.

An amended General License 7 was issued on October 18, 1990, following internal discussion and interagency consultations. The amended general license is now codified at section 575.510, with minor modifications. The amended General License 7 expanded eligibility to permit licenses to be issued to non-U.S. persons, such as foreign subsidiaries of U.S. firms. This step was necessary in the context of a multilateral blocking program to ensure a degree of reciprocity helpful to U.S. firms' claims in third countries. The amendment also restricted licensing to payment based on letters of credit issued or confirmed by U.S. banks, or credit reimbursements confirmed by U.S. banks. General License 7, amended, provided for the issuance of licenses for payments only to those exporters with respect to which a U.S. bank had undertaken a mandatory, binding obligation to pay under a letter of credit, and permitted reimbursement from blocked Iraqi collateral for such payments by banks that had become secured creditors of Iraq prior to August 2, 1990, under recognized principles of U.S. and international letter of credit law.

Question. Is it Department of Treasury policy to deny license applications that meet the criteria of the regulations in effect at the time of receipt?

Answer. This question was answered in the immediately preceding question.

We followed normal FAC procedures in addressing all license applications submitted in connection with the declaration of the national emergency with respect to Iraq, including applications related to letters of credit. Regulations promulgated pursuant to a declaration of a national emergency under IEEPA must change in response to changing foreign policy conditions. It is essential to the President's conduct of foreign policy that policy changes be implemented immediately. A license application is thus evaluated pursuant to the regulations as they exist at the time of a determination on the application. Any other rule would not be responsive to the changing foreign policy context facing the United States.

Question. I want to know your recollection, to the best of your memory, of the rationale for the change between August and October. And did you know at the time that U.S. banks would receive the lion's share of benefit from the amended regulation, or did you not know?

Answer. The first part of this question, requesting the rationale for the change from General License 7 to General License 7, amended, was answered in response to question 9 above. Regarding the second part, as is apparent from the answer to question 11, it is not correct that U.S. banks received the lion's share of benefit from the amended regulation. Banks have only obtained funds pursuant to General License 7 amended where an exporter, the ultimate beneficiary of the transaction, received payment. In 23 of these cases, involving $88 million, beneficiaries were paid and confirming banks were left with claims against Iraq. Thus, it was exporters which took the extra, expensive, step of obtaining a confirmed letter of credit who benefited most from FAC's licensing policy. Whenever an exporter had a confirmed letter of credit and satisfied its terms pre-sanctions, he got paid.

Question. Senator Robb referred to a case, and we may be referring to the same case. I did not hear him address any dates, but I know of one company that submitted an application before October 18. The application met the specifications of the regulations in place at that time, the time of receipt. After the regulations were amended, the company's license was denied. Now, what do you think of that action by our government? You say you followed the regulations. Did you follow them in this case?

Answer. FAC received a number of license applications prior to October 19, 1990, thus I cannot be certain of the particular case to which this question refers. However, all applications received consideration pursuant to identical criteria. General License 7 was permissive, allowing for the refinement of licensing criteria consistent with the foreign policy considerations applicable to Iraq. The final product of U.S. policy evaluation regarding licensing of payments of goods exported to Iraq pre-August 2, 1990, was the modification of General License 7, which appeared in General License 7, amended, and 31 C.F.R. 575.510.

One significant change expanded the eligible beneficiary pool from a U.S. person to any person. Many applicants failed to note this requirement and would not have qualified under General License 7 because they were not U.S. persons.

GENERAL LICENSE NO. 7

OFFICE OF FOREIGN ASSETS

CONTROL KUWAIT ASSETS CONTROL REGULATIONS

IRAQI SANCTIONS REGULATIONS

August 15, 1990

Payment For Goods or Services Exported Prior to Effective Date to Iraq or Kuwait or to the Government of Iraq or Government of Kuwait.

(a) Specific licenses may be issued on a case-by-case basis to permit payment, from a blocked account or otherwise, of amounts owed to or for the benefit of a U.S. person for goods or services exported by a U.S. person or from the United States prior to the effective date directly or indirectly to Iraq or Kuwait, or to third countries for the benefit of the Government of Iraq or the Government of Kuwait, where the exporter's license application presents evidence satisfactory to the Office of Foreign Assets Control that:

(1) the exportation occurred prior to the effective date (such evidence may include, *e.g.*, bill of lading, air waybill, the purchaser's written confirmation of completed services, customs documents, insurance documents), and

(2) if delivery or performance occurred after the effective date, due diligence was exercised to divert delivery of the goods from Iraq or Kuwait and to effect final delivery of the goods to a non-prohibited destination, or to prevent performance of the services.

(b) This section does not authorize exportations or the performance of services after the effective date pursuant to a contract entered into or partially performed prior to the effective date.

(c) Transactions conducted under specific licenses granted pursuant to this section must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section within ten (10) days of the date of payment.

(d) Separate criteria may be applied to the issuance of licenses authorizing payment from an account held in a blocked U.S. bank.

(e) Terms used in this license are defined as follows:

(1) The term "U.S. person" shall mean any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels of U.S. registration.

(2) The term "effective date" shall mean (A) 5:00 a.m. Eastern Daylight Time, August 2, 1990, in the case of exportations to or for the benefit of the Government of Iraq or the Government of Kuwait; or (B) 8:55 p.m. Eastern Daylight Time, August 9, 1990, in the case of exportations to Iraq or Kuwait, or to a non-governmental business in a third country operated from Iraq or Kuwait.

(3) The term "Government of Iraq" shall mean

a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

b) Any partnership, association, corporation, or other organization owned or controlled by the foregoing;

c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly on behalf of any of the foregoing, and

d) Any other person or organization determined by the Secretary of the Treasury to be included within this section.

(4) The term "Government of Kuwait" shall mean

a) The state and the government of Kuwait, any entity purporting to be the Government of Kuwait, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Kuwait;

b) Any partnership, association, corporation, or other organization owned or controlled by the foregoing;

c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly on behalf of any of the foregoing, and

d) Any other person or organization determined by the Secretary of the Treasury to be included within this section.

(5) The term "blocked account" shall mean an account in a U.S. financial institution with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

(6) The term "exportation" shall mean (A) the actual departure of goods from the territorial jurisdiction of the country from which exported, or (B) the performance by a U.S. person of services that are intended to result in a benefit to the Government of Iraq, the Government of Kuwait, a person in Iraq or Kuwait, or an entity operated from Iraq or Kuwait.

Issued: August 15, 1990.

R. RICHARD NEWCOMB,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 7, AS AMENDED
OFFICE OF FOREIGN ASSETS
KUWAIT ASSETS CONTROL REGULATIONS
IRAQI SANCTIONS REGULATIONS

October 18, 1990

Payment For Goods or Services Exported Prior to Effective Date to Iraq or Kuwait or to the Government of Iraq or Government of Kuwait.

(a) Specific licenses may be issued on a case-by-case basis to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods or services exported prior to the effective date directly or indirectly to Iraq or Kuwait, or to third countries for an entity operated from Iraq or Kuwait or for the benefit of the Government of Iraq or the Government of Kuwait, where the license application presents evidence satisfactory to the Office of Foreign Assets Control that:

(1) the exportation occurred prior to the effective date (such evidence may include, *e.g.*, bill of lading, air waybill, the purchaser's written confirmation of completed services, customs documents, insurance documents), and

(2) if delivery or performance occurred after the effective date, due diligence was exercised to divert delivery of the goods from Iraq or Kuwait and to effect final delivery of the goods to a non-prohibited destination, or to prevent performance of the services.

(b) This general license does not authorize exportations or the performance of services after the effective date pursuant to a contract entered into or partially performed prior to the effective date.

(c) Transactions conducted under specific licenses granted pursuant to this general license must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section, within ten (10) days of the date of payment.

(d) Separate criteria may be applied to the issuance of specific licenses authorizing payment from an account held in a blocked U.S. bank.

(e) Terms used in this general license are defined as follows:

(1) The term "effective date" shall mean (A) 5:00 a.m. Eastern Daylight Time, August 2, 1990, in the case of exportations to Iraq or for the benefit of the Government of Iraq or the Government of Kuwait; or (B) 8:55 p.m. Eastern Daylight Time, August 9, 1990, in the case of exportations to Kuwait, or to an entity operated from Iraq or Kuwait but not controlled by the Government of Iraq or the Government of Kuwait.

(2) The term "Government of Iraq" shall mean

(A) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

(B) Any partnership, association, corporation, or other organization owned or controlled by the foregoing;

(C) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly on behalf of any of the foregoing, and

(D) Any other person or organization determined by the Secretary of the Treasury to be included within section (e)(2).

(3) The term "Government of Kuwait" shall mean

(A) The state and the Government of Kuwait or any entity purporting to be the Government of Kuwait, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Kuwait;

(B) Any partnership, association, corporation, or other organization owned or controlled by the foregoing;

(C) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly on behalf of any of the foregoing, and

(D) Any other person or organization determined by the Secretary of the Treasury to be included within section (e)(3).

(4) The term "blocked account" shall mean an account in a U.S. bank with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

(5) The term "exportation" shall mean (A) the actual departure of goods from the territorial jurisdiction of the country from which exported, or (B) the performance of services that are intended to result in a benefit to the Government of Iraq, the Government of Kuwait, a person in Iraq or Kuwait, or an entity operated from Iraq or Kuwait.

Issued: October 18, 1990.

R. RICHARD NEWCOMB,
Director, Office of Foreign Assets Control.

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR HELMS AT THE HEARING

QUESTION FOR MR. NEWCOMB, OFAC AND FOR MR. MATHESON, STATE

The following responds to the part of the question concerning the jurisdiction of the U.N. Compensation Commission, which is the responsibility of the Department of State.

Question. Is the Committee correct in its assessment that the $944.2 million claimed by U.S. nationals and the $1.28 billion claimed by U.S. businesses are claims arising post-August 2, 1990 and therefore, are claims that fall within the scope of the U.N. Compensation Commission?

Answer. The figures based on the Treasury census of potential claims were developed before the criteria for the U.N. compensation system were established. Since the criteria placed limits on the eligibility of claims that could be filed, not all claims reported in the Treasury survey were eligible for submission to the U.N. compensation system. To date the Department of State has filed $215 million in claims on behalf of U.S. individuals with the U.N. Compensation Commission. It has also filed $1.5 billion on behalf of U.S. companies. Claims which were not the direct result of the invasion and occupation of Kuwait, including claims caused solely by the trade embargo and related measures, fall outside the scope of the U.N. compensation system, even though they may have arisen after August 2, 1990.

Question. During the course of the hearings you both approximated that there are $5 billion in U.S. claims which fall outside the scope of the U.N. Compensation Commission and therefore, would be eligible for access to the frozen Iraqi funds.

During the course of the hearings and mark-up of H.R. 3221 in the House of Representatives, the Administration submitted a chart detailing the result of a census of unadjudicated claims as of January 1991. The total of U.S. claims arising from events prior to August 2, 1990 is approximately $3.119 billion.

It is the Committee's understanding at this time that the U.N. Compensation Commission's mandate includes only those claims arising after August 2, 1990, except for the claims of the U.S. government and U.S. veterans of the Persian Gulf War (except POW's).

How does the $5 billion figure break down? Since the January 1991 census, have you become aware of pre-invasion claims above and beyond the $3.110 billion figure? Is the Committee correct in its assessment that the $944.2 million claimed by U.S. nationals and the $1.28 billion claimed by U.S. businesses are claims arising post-August 2, 1990 and therefore, are claims that fall within the scope of the U.N. Compensation Commission?

Answer. This answer also addresses a written question submitted to Treasury and State in the September 21 hearings, shown herein after question number 25.

Treasury conducted a census of potential claims against Iraq in January 1991, prior to Operation Desert Storm and the liberation of Kuwait. The census was con-

ducted before the criteria for the U.N. compensation system were established. The estimated breakdown of those claims are shown on the next page.

Treasury has not conducted a further census of claims and is currently unaware of any additional pre-invasion claims above and beyond the approximately $3.1 billion figure shown as pre-August 2, 1990. Those shown as post-August 2, 1990 overlap to some degree with claims that may fall within the scope of the U.N. Compensation Commission. Since the U.N. criteria placed limits on the eligibility of claims that could be filed, a substantial portion of the claims arising post-August 2, 1990 reported to Treasury are not eligible for submission to the U.N. These include claims which were not the direct result of the invasion and occupation of Kuwait, such as those caused solely by the trade embargo and related matters.

We are informed by the State Department that to date $215 million in claims on behalf of individuals, $1.5 billion in claims on behalf of U.S. companies, and $17 million in claims on behalf of the U.S. Government have been filed with the U.N. Compensation Commission. In addition, we are advised that there may be 2400 claims by U.S. servicemen or their families for deaths or serious injuries during the Persian Gulf War.

QUESTIONS FOR MR. MATHESON, DEPARTMENT OF STATE

Question. Are you aware of any other time when all U.S. veterans, not just POW's, have been compensated for their claims from the assets of the government against which they fought? If so, please provide specific instances.

Answer. No. In the early 1950s, amendments to the War Claims Act directed that U.S. servicemen held as prisoners of war be compensated for mistreatment while in captivity out of liquidated German and Japanese assets in the United States. The report of the War Claims Commission submitted to Congress noted that, except where a defeated power is required to compensate certain claims by treaty, "each country is free to develop and implement its own system of compensation for war damage." House Doc. No. 67, January 16, 1953, at 62. Foreign governments did pay compensation for the claims of U.S. service members or their survivors after the 1967 attack on the U.S.S. Liberty and, in part, the 1987 attack on the U.S.S. Stark, but the United States was not engaged in armed conflict at the time of those incidents.

Question. Could H.R. 3221, if enacted in its current form, set a precedent that might eventually have an adverse impact on the manner in which the U.S. Government compensates U.S. veterans in the future?

Answer. No. H.R. 3221 offers an opportunity for veterans to gain additional compensation from Iraq for losses arising from the invasion and occupation of Kuwait, or the 1987 attack on the U.S.S. Stark. It would not affect or reduce any benefits they are entitled to from the U.S. Government under U.S. law, as a result of such losses. They could recover for losses they can prove in excess of any benefits they receive under U.S. law. This would not adversely affect the way the U.S. Government compensates U.S. veterans in the future.

Question. Does the Department of Veterans Affairs compensate veterans for claims submitted as a result of the "mystery illness" or "Persian Gulf War Syndrome."

Answer. We have been informed that there is separate legislation on this subject which is pending in the Senate. The Administration supports the legislation which would authorize payments to the veterans for undiagnosed ailments for a three year period while research into the "mystery illness" continues. Also, the VA has recognized chronic fatigue syndrome for compensation under existing law.

Question. If the veterans were included in the Senate version of the "Iraq Claims Act of 1994", would the benefits they receive from the federal government be affected?

Answer. Any compensation received under the Iraq Claims Act would not affect or reduce any service-connected disability benefits veterans are entitled to receive from the federal government under other provisions of law, including programs administered by the Departments of Defense and Veterans Affairs, for deaths or injuries incurred as a result of the Persian Gulf War or the attack on the U.S.S. Stark. (Of course, compensation received under the Act, like other income, could affect any need-based pensions for total disability unrelated to military service.)

Question. Could veterans of the Persian Gulf War file a claim against the frozen Iraqi assets account to cover any costs arising from the acquisition of the "Persian Gulf War Syndrome"?

Answer. Yes, they could file a claim. In order for them to receive compensation, however, like other claimants, the Foreign Claims Settlement Commission would have to determine that the costs claimed were the direct result of Iraqi actions, and

represented amounts in excess of any benefits they have already received from other sources, e.g., the Departments of Defense or Veterans Affairs, for the same losses.

QUESTION SUBMITTED BY SENATOR FEINGOLD AT THE HEARING

QUESTION FOR MICHAEL MATHESON, DEPARTMENT OF STATE

Question. I am wondering if, in your efforts to secure the greatest practical return for the frozen assets that are under U.S. jurisdiction, you are contemplating provisions for procedures by which non-liquid assets that are frozen can be sold in other ways. It has been proposed in the case I have mentioned that rather than accept $100,000 for the sophisticated equipment, the U.S. Government could authorize the U.S. manufacturer as its agent to sell the assembly. With its intimate knowledge of the industry and specific marketing expertise, the manufacturer has a reasonable opportunity to obtain the product's full market value. Under this proposal, if a sale is made, the manufacturer would get some sort of commission, and the claims fund would be significantly augmented. It would seem that all claims would gain. What is your reaction to this proposal?

Answer. Under the current Treasury regulations, proceeds from the sale of any frozen assets must be deposited into a blocked account, without the deduction of any commission. The specific procedures for liquidating assets after vesting to generate funds for the payment of claims have not yet been developed. In principle, we are in favor of measures that would generate as much revenue as possible from non-liquid assets, so as to maximize the amount of funds available for recovery by the claimants. The proposal outlined in your question raises interesting possibilities, which will need to be considered carefully. If the President were authorized to vest and liquidate the frozen Iraqi assets, we would be prepared to examine with Treasury whether a commission could be paid to U.S. nationals or companies that render services on behalf of the U.S. Government during such a process.

ADDITIONAL DOCUMENTS SUBMITTED BY THOMAS C. PARRISH OF MONK-AUSTIN INTERNATIONAL INC.

PARKER, POE, ADAMS & BERNSTEIN,
CHARLOTTE, NORTH CAROLINA,
September 10, 1990.

Director, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC

Attn: Licensing
Re: Request For Special License—Iraqi Blocked Account

DEAR SIR: This firm represents A.C. Monk and Company, Inc., a worldwide tobacco leaf broker and dealer located in Farmville, North Carolina ("Monk"). Monk seeks a special license to obtain payment on a sales contract entered into by and between Monk and the State (Iraq) Enterprise for Tobacco and Cigarettes and completed by Monk prior to the August 2, 1990 Executive Order blocking Iraqi accounts in the United States ("blocking order").

Monk is the beneficiary of an irrevocable documentary letter of credit number 10/66034 (the "LC"), issued by Rafidain Bank of Baghdad, Iraq and advised by UBAF-United Arab American Bank of New York ("UBAF"). The LC provides for payment against presentation of Monk's tenor draft twelve months after sight, in this case, October 5, 1990. Normally, payment would occur through UBAF.

The underlying sales transaction was for the sale of 500,000 KGS net weight of Brazilian tobacco. The order was filled by Monk's Brazilian supplier, Tabasa Tobacos, for Monk's account, and shipped from the port of Paranaguá, Brasil on October 5, 1989. Monk invoiced the Iraqi customer, the State Enterprise for Tobacco and Cigarettes. Monk paid its supplier, absorbing the credit risk for the following year. As far as Monk knows, the tobacco was delivered to the customer. Thus, the entire transaction has been completed, except for payment to Monk.

We do not know if Rafidain Bank will honor the LC. If they were to pay through normal channels, the money would be wired to UBAF. If this occurs, UBAF has reported to me that it will not relay the funds to Monk, because the funds would be subject to the blocking order. I believe this position is incorrect, since Rafidain Bank will not own the funds once wired to UBAF in satisfaction of Monk's draft. The funds will be Monk's assets, not Rafidain's, and therefore they will not be subject

to the blocking order. Nonetheless, Monk hereby seeks a special license authorizing UBAF to pay Monk from any funds received by it from Rafidain under the LC.

We recognize that Rafidain Bank may not pay the LC, even if a special license authorizes the transaction. In such case, Monk will have to institute a collection action against Rafidain Bank and the customer, and seek to attach any assets which might have been in the U.S., such as deposits with UBAF. We therefore also seek a special license authorizing such attachment (whether pre-judgment or post-judgment).

I enclose copies of the following documents in support of this application:

- Commercial Invoice no. VA–103/89, October 5, 1989
- Advice of Irrevocable Letter of Credit No. 10/66034, June 16, 1989
- Transmittal letter to UBAF dated October 10, 1989, with the following as an exhibit:
- Bill of lading

Please call me at once if I can supply other documents or information.

Very truly yours,

E. THOMAS WATSON,
Partner, Parker, Poe, Adams & Bernstein

[The witness did not submit the above-mentioned enclosures for printing.]

DEPARTMENT OF THE TREASURY,
WASHINGTON, DC,
APRIL 18, 1991.

FAC No. 119372

Mr. E. Thomas Watson,

Partner, Parker, Poe, Adams & Bernstein

DEAR MR. WATSON: This is in response to your letter dated September 10, 1990, to the U.S. Department of the Treasury's Office of Foreign Assets control ("FAC") on behalf of A.C. Monk and Company, Inc. ("Monk"). You state that Monk's Brazilian supplier shipped tobacco to Iraq under the terms of a letter of credit issued by Rafidain Bank, Baghdad which was advised through UBAF Arab American Bank ("UBAF"). Furthermore, this letter of credit was entered into prior to the effective date of Executive Order Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, ("E.O. 12722 and 12724"). You therefore claim the sum of USD1,815,000.00 from UBAF, which has not made payment due to the blocking of Iraqi assets pursuant to E.O. 12722 and 12724.

FAC has established conditions under which specific licenses may be issued authorizing payment for goods or services exported to Iraq prior to the effective date of E.O. 12722 and 12724. The Iraqi Sanctions Regulations, 31 CFR Part 575 ("Regulations"), state that specific licenses may be issued on a case-by-case basis to permit payment involving an irrevocable letter of credit *issued* or *confirmed* by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank.

Based on the information contained in your letter and additional information submitted by UBAF, your application cannot be approved. Specifically, the financing terms of the Monk transaction do not qualify for issuance of a specific license under the provisions of the Regulations. Your request for payment from UBAF rests solely on an advised letter of credit arrangement under the terms of the letter of credit, extending no mandatory legal obligation for UBAF to remit funds to any party under any of your letters of credit. Absent an identifiable and binding legal undertaking by UBAF or any other American bank, FAC will not require nor license the remittance of funds by financial institutions authorized to transact business in the United States.

Sincerely,

R. RICHARD NEWCOMB,
Director, Office of Foreign Assets Control

PREPARED STATEMENT OF ARAB AMERICAN BANK

[Submitted by Fakhruddin Khalil, Chairman and Chief Executive Officer]

Arab American Bank *("AAB")* is a New York State-chartered bank that was established in New York City in 1976. AAB is a relatively small bank with equity of approximately $45 million and total assets of approximately $610 million. AAB's primary regulator is the New York State Banking Department, it is insured with the FDIC and it is a member of the Federal Reserve System.

AAB's primary business is the financing of U.S. exports to the Middle East. AAB has been a leader in that field, often financing U.S. exports to Middle Eastern coun-

tries that are difficult credit cases and that other U.S. banks have been reluctant to handle. Prior to the Gulf War, one such country was Iraq.

At the time Executive Order Nos. 12722 and 12724 were issued and the Iraqi Sanctions Regulations (31 CFR 575) came into effect, AAB had a number of pending transactions involving U.S. exporters and Iraqi purchasers. These transactions were frozen by AAB in accordance with the Executive Orders and the Iraqi Sanctions Regulations and have been completed by AAB only when specifically permitted to do so in accordance with licenses issued by the Office of Foreign Assets Control *("OFAC")* of the U.S. Department of the Treasury.

We are pleased that the Congress is seeking to resolve the current situation involving claims and assets relating to Iraq in its consideration of the Iraq Claims Act. Our review of the Act, however, has raised for us a serious concern that it may be construed in a manner that would deprive AAB (and other similarly-situated creditors of Iraq) of the collateral and security interests that AAB currently holds and that were properly obtained by AAB at the time it entered into various export finance transactions related to Iraq. An example may be useful:

Prior to the Gulf War, AAB would from time to time "confirm" letters of credit issued by Iraqi banks in favor of American exporters. By confirming a letter of credit, AAB added its own credit to the transaction, meaning that the U.S. exporter wold be entitled to rely on AAB for payment under the confirmed letter of credit. Receipt of a "confirmed" letter of credit provided the U.S. exporter with the payment assurance it needed to proceed with the export. Upon making payment under a confirmed letter of credit, AAB would be entitled to be reimbursed by the Iraqi bank that issued the letter of credit.

As a condition to adding its confirmation to an Iraqi letter of credit, and thereby taking the credit risk of the Iraqi issuing bank, AAB would frequently require that the reimbursement obligation of the Iraqi bank to AAB be collateralized with a cash deposit. Certain letters of credit confirmed by AAB were collateralized with cash deposits established specifically to secure those particular letter of credit transactions; other letters of credit were collateralized with general deposits maintained with AAB by the Iraqi issuing bank and from which AAB would typically reimburse itself after paying under its confirmation.

AAB's security interest in the cash deposit and its right to set-off against the cash deposit would be established by agreement with the Iraqi issuing bank and/or under New York law. In either case, these security interests and set-off rights are of the type that would be recognized and would be enforceable by a creditor in a U.S. bankruptcy proceeding. In accordance with the Iraqi Sanctions Regulations, these deposits are "blocked" and may be utilized by AAB only if licensed by OFAC.

Given this background, we were surprised not to find in the Iraq Claims Act some recognition and protection of the security interests and set-off rights being held by creditors of Iraq, such as AAB. The draft of the Act that we have reviewed provides, in Section 3, for the establishment of an "Iraq Claims Fund" into which the President would allocate funds resulting from the liquidation of assets pursuant to Section 4 of the Act. Section 4 of the Act in turn authorizes the President to vest and liquidate as much of the assets of the Government of Iraq in the United States that have been blocked pursuant to the International Emergency Economic Powers Act as may be necessary to satisfy claims of U.S. nationals, as well as certain other claims. Those blocked assets would include, for example, the blocked cash deposits discussed above. Finally, Section 6 of the Act, dealing with payments, sets out the few payment priorities contemplated by the Act. Those payment priorities do not appear to recoguize the security interests or set off rights that were properly and prudently obtained by AAB prior to the imposition of the Iraqi Sanctions Regulations. As a result, the Act could be interpreted to deprive AAB of its bargained-for collateral, and AAB could find itself treated as an unsecured creditor.

AAB's concerns are by no means hypothetical, as demonstrated by one current situation. Prior to the Gulf War, the Central Bank of Iraq requested AAB to confirm a letter of credit in favor of a U.S. manufacturer to finance an export of equipment to Iraq. AAB issued its confirmation, but only after obtaining a cash deposit from the Central Bank that fully collateralized the Central Bank's reimbursement obligation to AAB. AAB would not have entered into the transaction without that collateral. After Iraq invaded Kuwait, the deposit of the Central Bank with AAB was "blocked" pursuant to the Iraqi Sanctions Regulations. Some time later, the U.S. manufacturer in whose favor the letter of credit and confirmation were issued brought suit against AAB claiming that AAB was obligated to make payment under its confirmation, regardless of the Iraqi Sanctions Regulations. AAB contested that suit on several grounds, but the court decision went against AAB.

AAB is appealing this decision, but if it does not prevail on appeal, it will seek to obtain a specific license from OFAC allowing it to exercise its security interest

in the "blocked" cash collateral it is holding. You will no doubt appreciate the injustice to AAB if, instead, that cash collateral is swept up by the Iraq Claims Act into a pool of funds in which all creditors of Iraq, both secured and unsecured, are entitled to share on a pro rata basis. Clearly AAB will have been deprived of its bargained-for property rights.

In a brief conversation that our legal counsel had with OFAC representatives, they were informally advised that the Iraq Claims Act was not intended to deprive creditors of Iraq of their valid security interests, property rights and collateral, it being the expectation of the OFAC representatives that such issues would be addressed in implementing regulations. The absence of any recoguition of these fundamental property rights in the Act, however, heightens our concern that such rights be fully and properly recognized and protected in the implementing regulations.

We therefore request the Subcommittee's recognition of these concerns in its deliberations and in the Subcommittee's record.

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